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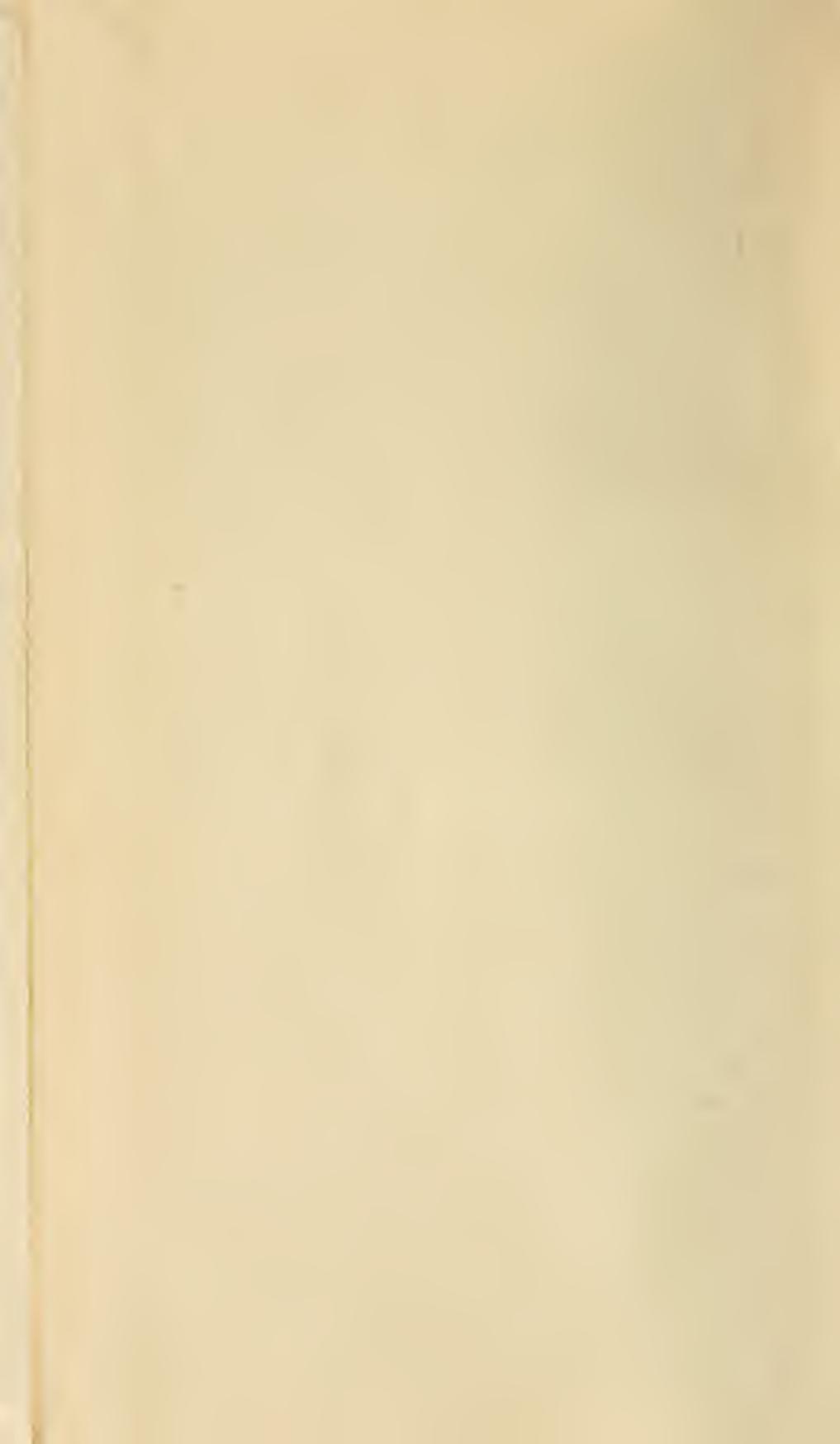


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INTRODUCTORY REPORT

TO THE

CODE OF PRISON DISCIPLINE:

EXPLANATORY OF THE PRINCIPLES ON WHICH
THE CODE IS FOUNDED.

BEING PART OF THE

SYSTEM OF PENAL LAW,

PREPARED FOR THE

STATE OF LOUISIANA.

BY EDWARD LIVINGSTON.

PHILADELPHIA:

CAREY, LEA & CAREY—CHESNUT STREET.

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1827.

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ERRATA.

Page 1. line 25. for *legislature*, read *legislator*.
9. " 6. for *invasion*, read *invasions*.
ib. " 14 & 16. for *disease*, read *desire*.
10. " 14. for *plan*, read *place*.
ib. " 27. for *incapable of being*, read *cannot always be*.
ib. " 5. for *was*, read *were*.
12. " 6. for *resumes its*, read *resume their*.
18. " 2. after *as*, dele *the*.
19. " 19. for *that*, read *the former*.
28. " 3. for *to England*, read *to extend*.
35. Strike out in the note the words, " *a much greater disproportion exists between the commitments and conversions in Great Britain, but*."

PREFATORY NOTE

BY THE EDITORS.

The following pages form the introduction to the Code of Prison Discipline, being the concluding part of a system of penal law, prepared by Mr. Livingston, for the State of Louisiana, in pursuance of a law of that state; under which he was appointed to the novel and highly honourable task which he has just concluded for the second time; after having, about two years ago, lost by an accidental fire, his first manuscript and all his notes.

The whole system, (consisting of a Code of crimes and punishments, a Code of procedure, a book of Definitions, and a Code of Prison Discipline,) has been presented for the consideration of the Legislature, and copies have been distributed by the author, with the laudable view of obtaining suggestions for the improvement of his plan. But this circulation being necessarily very limited; the Editors have been induced, without any view to profit, to offer this edition to the public, from a persuasion, that the views developed in the introduction, contained matter that deserved the serious attention of their fellow citizens, more particularly as the review of the Penal Code of this State, will occupy the attention of the Legislature at the next session.

Should this introduction receive the public patronage, they will publish the Code of Prison Discipline, as the part that involves the deepest interest, and on the Efficacy of which the whole system seems to rest. The introductory report to the whole system, and the other codes of which it is composed, have excited some attention in different parts of Europe: where several Editions in different languages have been published; but as the work is of considerable magnitude, the Editors cannot yet pledge themselves to offer an Edition of it to the public.

Philadelphia, July 7, 1827.

INTRODUCTORY REPORT
TO THE CODE OF
REFORM AND PRISON DISCIPLINE.

IN offering to the Legislature a system of penal law, the principal sanction of which is imprisonment, it is scarcely necessary to remark, that its whole efficacy must depend on the manner in which confinement is to be inflicted as a punishment, or used as a means of detention ; in other words, on the wisdom of the code of prison discipline. In preparing the plan now submitted, I kept in view, as the great objects to be attained—restraint, example, and reformation. To discover what species of seclusion would best produce these ends, rigidly to direct every privation necessary to attain them, but to inflict no evil greater than was required to produce these consequences, would seem at first view a comparatively easy task ; but the selection of proper means, and the details required for their application, presented difficulties in the execution only to be overcome by the closest attention to facts, and the most cautious calculation of consequences. A statement of these facts, and an exposition of the consequences drawn from them, will enable the House better to understand and decide on the plan which I have the honour to propose.

At the time when the penal law of Great Britain (still liable to the reproach of unnecessary severity in its enactments, and barbarity in its executions,) had received none of those improvements which the true principles of jurisprudence have since produced, the benevolent heart and enlightened mind of the Legislature of Pennsylvania, suggested the substitution of solitary imprisonment and labour for the punishment of death. The beneficial effects of this change were felt until they were

counteracted by the intolerant and sanguinary system of the common law of England, enforced by the paramount authority of the mother country. But no sooner did independence confer the power of consulting the public good, than the People of Pennsylvania made the reformation of the penal code a constitutional obligation on their representatives ; and, amidst the confusion produced by foreign invasion and civil discord in the Revolutionary war, a society worthy of the city of " brotherly love" was formed *for the relief of distressed prisoners*. With persevering benevolence, they not only relieved the victims of the inhuman system that then prevailed, but, by unceasing appeals to true principles, induced the Legislature of that State to begin the great reform. In all but two or three cases, the punishment of death was abolished : labour was substituted for loss of life and stripes ; but, contrary to the opinion early expressed by the society in favour of solitary labour, that on the public works was adopted. The error was a radical one : debasement, corruption, and an immediate repetition of crime, were the consequences ; and the failure of this experiment with any but a wise and reflecting people, might have been fatal to the system. But, happily for Pennsylvania, and perhaps for the world, she had enlightened men to frame her penal laws : and happier still, she had a class of citizens admirably calculated to execute them with the zeal of enthusiasm. The founder of that State, and his first associates, belonged to a sect which fitted them, by its principles, and by the habits, and pursuits, which it created and prescribed, to be the agents of a reform in jurisprudence similar to that which they adopted, and, perhaps, carried, to excess, in religion. Their descendants, with less of that enthusiasm which, in their ancestors, was exalted by persecution, had all the active benevolence and Christian charity necessary to prompt, and the perseverance and unwearied industry to support their exertions. Abstracted by their tenets from the pleasures which occupy so large a portion of life among other sects ; equally excluded from other pursuits in which so many find occupation ; freed from the vexations of mutual litigation, by submitting every difference to the umpirage of the elders, and from the tyranny

of fashion by an independent contempt for its rules ; the modern quakers devote all that time which others waste in dissipation, or employ in intriguing for public employment, to the direction of charitable institutions, and that surplus wealth which others dissipate in frivolous pursuits, to the cause of humanity. In every society for promoting education, for instructing or supporting the poor, for relieving the distresses of prisoners, for suppressing vice and immorality, they are active and zealous members ; and they indemnify themselves for the loss of the honours and pleasures of the world by the highest of all honours, the purest of all pleasures, that of doing good.

To these men, and others who participated in their principles, was committed the task of uniting reformation and punishment, when seclusion was substituted for the public labour to which the convicts had before been exposed. The most encouraging results justified the change in the law, and the selection of persons to whom its execution was committed ; and from the year 1790, when it took place, until 1793, we have the official attestation of one of the inspectors,* that, out of two hundred convicts who had been pardoned, only four were returned on a second conviction ; that only two cases of burglary, and not one of privately stealing from the person, had occurred ; that the streets and roads were freed from robbers, and that in all the prisons for the populous *city* and *county* of Philadelphia, immediately before the sitting of the Court, only four persons were in custody for trial. This last is a striking fact. The city and county of Philadelphia, at that time, contained upwards of sixty thousand inhabitants, and, prior to that time, more than thirty had been condemned at a Session, a number which supposes at least fifty commitments ; so that, in the short space of two years, the effect of the system was the entire suppression of some crimes, and the reduction of others in the proportion of ten to one, in the place where the example might be supposed to have had the greatest effect.

* A member of the Society of Friends, who has rendered the name of LOWNDES as celebrated for active, enlightened benevolence, as a late lamented statesman has since done for eloquence, patriotism, and integrity.

The operation of the system in the whole of the State, was nearly as encouraging. Although its population was increasing in a very rapid ratio, yet conviction decreased from one hundred and twenty-five, in the year 1789, to the respective numbers of one hundred and nine, seventy, sixty-three, forty-five,* in the four succeeding years. Thus we find that, although the population of the State was increasing in a ratio of four and a half per cent. a year, offences had decreased in the proportion of forty-five to one hundred and twenty-five, or nearly two thirds less ; and in the last year I have mentioned, there were no convictions for one half of the crimes that had figured on the preceding calendars. So remarkable a diminution of crime in a regular decreasing series, is a fact worthy our most profound attention, when we are considering the effect of this species of punishment. Nothing can develop the true principles of legislation on this subject more clearly than the history of the reform in Pennsylvania in all its stages. In 1786, we find that the vicious system of labour in the public works was established. Under it, in the three years of its operation, and the first year after its appeal, but before the effects of the system could cease, the average number of convictions in each year was one hundred and nine ; in 1791, it decreased under the new system to seventy-six ; in 1792, to sixty-three ; and in 1793, to forty-five : all this while the population of the State, and (what is more worthy to be noted) of the city was rapidly increasing. This was the lowest point of depression : from that time the increase has been in a more rapid ratio than the diminution : for the first four years afterwards, the average was one hundred and nineteen, and it has gradually progressed until the average of the last twelve years is three hundred and eleven ; that is, within a fraction of eight times as many as it was in 1793 ; but the population of the State in that time had very little more than doubled,‡ so that crime has increased in proportion to the population nearly as eight is to two. Most

* Vaux's Notices.

† Seybert's Statistics.

‡ Four hundred and ninety-five thousand one hundred and eighty-five, in 1793. One million forty-nine thousand four hundred and fifty-eight, in 1820.

fortunately for the cause of truth, humanity, and wise legislation, the cause of this ebb and flow of crime is not difficult to discover ; and when pointed out, it will be more persuasive to show that there is a check that may be effectually applied to the increase of offences than the most ingenious argument that could be suggested.

In the three years previous to the year 1790, when Philadelphia prison was first used for the purpose of inflicting punishment by solitary confinement, three hundred and twenty-eight convicts had been confined. Of these, about two-thirds were committed for short terms, and others were discharged by pardon ; so that at the commencement of the year 1790, not more than about two hundred remained. The accommodations of the prison afforded the means of separation for this small number, and the humane zeal of the inspectors, quickened by the natural desire to give efficacy to the plan which they had themselves formed, urged on the labour and superintended the instruction of the convicts. In that year, the first of the experiment, but before its result could be known, one hundred and nine convictions took place. In the next, its beneficent effects began to be felt ; the convictions were reduced to seventy-eight, and in the two successive years, to sixty-three and forty-five. But in the meantime* the prison began to be crowded, solitary labour was necessarily abandoned, even classification became impossible ; the same prison serving for vagrants, fugitive apprentices,† and those committed for trial ; a relaxation of discipline was the natural consequence of the indiscriminate association, and the increase of convictions, in every succeeding term of four years bears an exact proportion to the increased numbers in the prison. This double result of a rapid and before unheard-of decrease while the convicts were separated and employed, and an increase almost in the same ratio when they were suffered to associate, seems to solve the great problem of penal jurisprudence, and points to seclusion and labour as an effectual remedy for the prevention of crime :

* No provision had been made for the increased number of prisoners, which, of all descriptions, amounted in 1793 to the average number 450.

† Petition of the Society for Public Prisons. 1801—1803.

for these effects were produced without any change in the state of society at the two periods, that could be favourable to such results; on the contrary, an increase of population while crimes were decreasing, and the same increase, but only of one half, in the numbers of the people during the other period, when crimes increased fourfold. This practical result, so decisive of the truth of the theory, founded on a consideration of human nature, with other corroborating facts, has confirmed me in the design not only of persevering in my first recommendation of imprisonment, solitude, and labour, in different degrees, and under different modifications, as the principal sanctions of the code, but it has become the basis of my whole system of prison discipline; and from the well attested fact that a plan, by no means perfect, persevered in for only four years, banished some crimes, and rapidly reduced the number of others nearly two-thirds, I draw the cheering conclusion that, by giving to the system the improvements of which it is susceptible, the sum of human happiness may be increased by the repression of crimes and of the evils which result both from their commission and punishment.

My position is, that imprisonment, with seclusion and labour, as a punishment, will diminish the offences for which it is inflicted; but that imprisonment without seclusion will increase them. What will be the effect of solitary confinement without labour, remains to be tried. The Pennsylvania experiment proves conclusively, that while the numbers were not too great to admit of seclusion, offences diminished; and when it was no longer practicable, they increased. In all the other States a similar result has been observed, during the first years. When there was room for classification, the most sanguine hopes of humanity were surpassed by the effect.* But with the promiscuous intercourse of the convicts, offences increased both in number and atrocity. This great truth, then, is supported in both its parts by experiment, the most conclusive of all proof, when it has been so often repeated, under different

* See report to the Senate of New York, and the reports of all the State prisons in the different States.

circumstances, as to show that the uniform result is produced by the same cause, and when it confirms a theory to which no abstract objection can be conclusively urged. But here the theory is emphatically one of that kind. Of all the crimes in the catalogue of human depravity, four-fifths are, in different forms, invasion of private property ; and the motive for committing them is the desire of obtaining, without labour, the enjoyments which property brings. The natural corrective is to deprive the offender of the gratifications he expects, and to convince him that they can be acquired by the exertions of industry. The remaining proportion of offences are such as arise from the indulgence of the bad passions, and for those also solitude and employment are the best correctives. But whatever corrects the disease or the passion that prompts the offence, acts in the double capacity, first of punishment, until the disease is repressed, and afterwards, when that is effected, of reformation. As an example, too, it is infinitely more efficacious than any other penalty. When it is seen that offences which were committed to avoid labour and to increase the enjoyments of society, lead only to solitude and labour, and that the passions which caused the more serious crimes, are to be kept under the rigid restraint of abstinence and reflection, in the fearful loneliness of a cell : when these examples are permanent, and by a rigid administration of justice believed to be inevitable, who that studies human nature can doubt the effect? Therefore, the experiments of Pennsylvania and of the other States, in the first years of their operation, as well as their subsequent failure, have but confirmed a theory true, because it was drawn from the workings of the human mind. They succeeded at first exactly in the proportion to the strictness of the seclusion ; they failed precisely in the ratio of its relaxation.

SOLITUDE and LABOUR, then, are the two great remedies. How are they to be employed? Is the confinement to be a rigid, unbroken solitude, or only a seclusion from the corruption of evil counsel and example? Is it to be permanent for the whole term of the sentence, or to be mitigated by proofs of industry and amendment? Is the labour to be forced or

voluntary, and is its principal object pecuniary profit to the State or the means of honest support to the convict? These are the great questions to be decided before we enter on the consideration of a multitude of subordinate details.

When imprisonment and labour was substituted for corporal punishment, the evils of promiscuous association became apparent. The separation most obviously required was that of the sexes, and this seems to have been universally introduced. But it required little observation or knowledge of human nature to discover that something more was necessary; that, as a place of punishment, a penitentiary would soon lose its terrors, if the depraved inhabitants were suffered to enjoy the society within, which they had always preferred when at large; and that, instead of a plan of reformation, it must become the best institution that could be devised for instruction in all the mysteries of vice and crime, if the professors of guilt are suffered to make disciples of those who may be comparatively ignorant. To remedy this evil, what is called classification was resorted to; first the young were separated from the old, then the analogous division was made between the novice and the practised offender; further subdivisions were found indispensable, in proportion as it was discovered that in each of these classes would be found individuals of different degrees of depravity, and, of course, corrupters, and those ready to receive their lessons. Accordingly, classes were multiplied, until, in some prisons in England we find them amounting to fifteen or more. But, all this while, the evident truths seemed not to have had proper force: first, that moral guilt is incapable of being discovered, and, if discovered, so nicely appreciated as to assign to each one infected with it, his comparative place in the scale; and that if it could be so discovered it would be found that no two would be found contaminated in the same degree. Secondly, that if these difficulties could be surmounted, and a class could be formed of individuals who had advanced exactly to the same point, not only of offence, but of moral depravity, still their association would produce a further progress in both, just as sparks produce a flame when brought together, which, separated, would be extinguished and die.

It is not in human nature for the mind to be stationary ; it must progress in virtue or in vice : nothing promotes this progress so much as the emulation created by society ; and from the nature of the society will it receive its direction. Every association of convicts, then, that can be formed, will in a greater or less degree pervert, but will never reform, those of which it is composed : and we are brought to the irresistible conclusion that classification once admitted to be useful, it is so in an inverse proportion to the numbers of which each class is composed ; and is not perfect until we come to the point at which it loses its name and nature, in the complete separation of individuals. We come, then, to the conclusion that each convict is to be separated from his fellows. But is he to be debarred from all other society ? In discussing this question we must always have before our eyes the ends we propose to attain by the discipline we inflict—punishment and reformation. So much punishment as is necessary to deter others from committing the crime, and the offender from repeating it ; every alleviation, not inconsistent with those objects, that will cause the culprit gradually to prefer a life of honest industry, not from the fear of punishment, but from a conviction of its utility. That system of prison discipline will make the nearest approach to perfection that shall best attain these objects. In order to judge in what degree the plan I propose is entitled to this distinction, it will be necessary to examine other systems, and a discussion of their defects will enable us to discover how far that which is proposed as a substitute avoids them.

Imprisonment and labour have been adopted as a punishment in fourteen of the twenty-four States. In none of these has there been, until very lately, any individual seclusion, except for breaches of prison discipline, and, during different periods, for the more atrocious offences : the consequences of this radical fault were such as might have been expected—an increase rather than a diminution of crime ; and the prodigal, indiscreet, and ruinous exercise of the pardoning power, combined to render abortive the best experiment ever made for the suppression of vice. The people who were taxed for the sup-

of these institutions, saw in them only the nurseries of crime, and were naturally desirous of throwing off the burthen ; and it was made, in one important State, a serious question whether they should not resort to sanguinary and infamous punishments. The calm reasoning and spirit of investigation, which sooner or later resumes its place in the councils of our republics, soon discovered that the experiment had not been fairly tried ; the cause of its failure became apparent ; and all agreed that imprisonment without separation would never serve either for punishment or reform. Two different systems were proposed to remedy the evil ; one is in the course of experiment ; the other has not yet been examined, but preparations are nearly completed for carrying it into effect on a most extensive scale, and in a degree that must completely test its utility. In New York there are two penitentiaries, and a third is now constructing : one of them, in the city, is, from its construction, and the numbers confined in it, necessarily conducted on the old vicious plan, which is to be abandoned as soon as the third prison is finished ; the other at Auburn, a village in the interior of the State, is the model for the new penitentiary, and by the partisans of the system on which it is managed, is declared to be one that ought to serve as a pattern for all others. That system is briefly this :—absolute solitude during the night ; joint labour during the day, but without any communication with each other by word or sign ; meals taken at the same table, but so disposed as not to see the faces of those opposite to them ; religious instruction on Sundays, received in a body ; and a Sunday school in the same manner, twice a day ; both in church and school the same prohibition of intercourse ; a full diet of meat, bread, and vegetables ; comfortable bedding, in very narrow but well-aired, well-warmed cells, and the utmost attention to cleanliness in every department of the prison ; visitors are admitted, but without permission to speak to the convicts—who on their discharge receive a sum not exceeding three dollars, without any relation to their earnings ; their work is uninterrupted during the day, except by their meals, and is generally contracted for by mechanics, who find the materials. This enumeration is not one of what is requi-

red, but what is actually done. And the strictness with which these rules have been enforced is such, that it is asserted that, among thirty or forty, working together for years in the same shop, no two of them know each others names. Mr. Elam Lynds, a gentleman who formerly served in the Army, has the credit of introducing this order—it was begun with his appointment as keeper of the Auburn prison, and he has executed it with most astonishing success in superintending the building of the new prison, at Sing Sing; where he has had two hundred convicts employed, with no other place of confinement than a wooden shed, in which they slept, and with only eight or ten under keepers and guards, and yet the same industry, order, and obedience, was preserved as there was within the walls of the prison. Nothing can be more imposing than the view of a prison conducted on these principles. Order, obedience, sobriety, industry, religious and literary instruction, and solitary reflection, all seem to promise beneficial effects on the convict, while the important points of secure detention and economy are attained for the State. Yet with all these advantages I cannot offer this system for adoption; and my chief objection arises from the means employed to procure them. It is by the lash,* put into the hands of the keeper, to be used at discretion, and by a power strangely I think declared to be legally vested in the turnkey.† The objections to this system are obvious. And first, the anomaly presents itself, not to call it by a harsher name, of permitting a punishment to be inflicted at the discretion not only of a man at the head of the institution, but by his under officers, at their discretion, and that too for disrespect, or the vague charge of disobedience.

* "It has already appeared that, as a mode of punishment, and as the means of enforcing prison discipline, in this prison, STRIPES are generally resorted to as a punishment, in the presence of the inspectors; and to enforce obedience, *by the keepers, at all times when necessary*. These stripes are required by the present agent to be inflicted by the keeper with a raw hide whip, and applied to the back, &c."—*Power's Account of the State Prison at Auburn*, p. 60.

"At Auburn stripes are almost the only mode of punishment."—*Report of Massachusetts Society*.

† Decision of the Court in the case of *The People vs. An Under Keeper at Auburn*.—*Power's Account*, p. 62.

ence, which punishment the law has abolished as too ignominious, unequal, and cruel, to be inflicted by the court for dangerous crimes. The discretion is limited, say the Court in their opinion, under which it is considered to be legal, to the enforcement of obedience for its object, and in degree to the punishment *necessary to secure it*. Can any thing be more vague? Obedience to what? Lawful commands is the answer; but it is unlawful to break any, the minutest regulation of the prison; it is unlawful to deny any breach of them when the convict is accused by the turnkey; therefore, if a convict speak to his neighbour he is whipped, and if he should deny having done so he is whipped. The very case in which the stripes were declared lawful, was one in which they were severely inflicted to make the convict confess, and when he had confessed, they ceased. Here is every character of the torture, applied by the lowest officer in the prison—and this by the Court of the State of New York was declared to be lawful, if the jury should think that the chastisement was not greater in degree than was necessary to enforce obedience. Now the obedience required in this case was the confession; and it follows, according to the decision of the court, that such force as was necessary to this end was justifiable; in other words, that torture by infliction of stripes might legally be used in the State of New York, by a turnkey, against a convict, according to the COMMON LAW, although the Legislature has enacted, “That if any prisoner in either of the States prisons shall refuse to comply with the rules, &c. it shall be lawful, and is declared to be the duty of the keepers, *under the direction of the inspectors*, to inflict corporal punishment by whipping, not to exceed thirty-nine lashes, or to confine them, &c. *Provided*, that, when corporal punishment is inflicted on any person by whipping, it shall be the duty of at least two of the inspectors to be present.” Then according to the discipline of this prison, as declared by the Court to be lawful, only thirty-nine stripes can be inflicted at a time for any offence, and that by order of the inspectors, and in the presence of two of them; but a turnkey, whenever it is necessary to enforce obedience, or a confession, may inflict as many as he pleases, without any witness of his proceedings.

I have enlarged upon this head (more, perhaps, than was necessary,) to enforce the position that the punishment by stripes was an anomaly even as it is permitted by law ; and I have detailed the practice independent of the Statute, for the direct purpose of showing the principle on which the discipline of this prison rests ; and for the incidental one, of illustrating, by a striking example, the difficulty of enforcing a Statute in countries governed by unwritten law. Here, because the Common Law permits a schoolmaster moderately to correct his pupil, and an officer his soldiers, the learned Judge declares it to be law, that the turnkey of a penitentiary, an institution utterly unknown to the Common Law, has a right to chastise a convict, nay, more, whip him until he confess himself guilty of an offence ; and this, too, although the Legislature has expressly directed that when he is whipped it shall be by the direction of other officers, and in their presence. Yet this decision is law in the State of New York, and is published as the authority by which the discipline of this prison is maintained.

The next objection to this system is its evident liability to abuse. The talent and firmness, tempered by moderation, the knowledge of human nature, and personal courage of Captain Lynds, who introduced it, and who began by procuring a waiver of all interference with his plans by the inspectors, have done much present good ; he has introduced order, economy, industry, and cleanliness ; he has banished many abuses ; and his system, under his own direction, although liable to strong objections, is yet so much superior in effect to any hitherto practised, that it has been considered as a model* for the imitation of the world ; and in his hands, I have no doubt, that many beneficial effects will result from it. But what security have we that the same rare qualities will be found united in another ? In the communications I have had with him, he says, that his method may be easily taught. This may be true, but unless he can impart his integrity and moderation,† as well

* Report of the Massachusetts Society.

† The case of the keeper above alluded to took place, I believe, after Mr. Lynds had left the Auburn prison, and is itself a strong illustration of the danger of unlimited delegation of power.

as a knowledge of his discipline, it will be unsafe to adopt a system, that must depend entirely for its success on the personal qualities of the man who is to carry it into effect.

But, even if we were sure of commanding all the requisite qualities and talents united in the same person ; still, there are faults, inherent in the plan, which no administration can cure. Fear is the great principle of this institution, and chastisement of the most degrading kind is the instrument to excite it. If the sole objects were to preserve order in the prison, it is perhaps as effectual, but certainly not as proper a mode as can be devised. But, as a punishment, it fails in two essential points ; in most cases it will not deter the party from a repetition of his crimes, and very rarely will it take away by reformation his inclination to relapse. A superficial view of this subject has led to the belief, that the great secret of penal legislation is, to annex a penalty of sufficient severity to every offence ; and, accordingly, all the variety of pains that the body of man could suffer, infamy and death, have figured as sanctions in the codes of all nations ; but although these have been in a train of experiment for thousands of years, under every variety that Government, manners, and religion, could give, they have never produced the expected effect. The reason is to be found in that insurgent spirit with which man was endowed by his benevolent Creator, to answer the best ends of his nature. The same feeling that elevated, refined, and, applied to the noblest purpose, animates the patriot to resist civil tyranny, and the martyr to defy the flames : when it is perverted, and made the incentive to vice and crime, goads on the convict to arraign the justice of his sentence, to rebel against those who execute it, and to counteract its effects with an obstinacy in exact proportion to the severity of the punishment. If the grossest follies and absurdest fancies of enthusiasm, as well as the clear truths and pure principles of religion, are extended and confirmed by severe punishments and persecution ; what more evident proof can we require, that this character of the human mind braces itself with an equal energy against bodily suffering, whether inflicted for the correction of error or the suppression of truth ! The convict, therefore, who has performed

his daily labour even for years under the pang or the dread of the lash, will be rather less deterred from the repetition of his crimes, whenever he thinks himself secure from detection, than he would have been by a milder discipline, because the spirit of hatred, revenge, and a desire to retaliate on society, are stimulated and strengthened by the principles which I have supposed to be inherent in our nature. But, as the object of punishment is not only to prevent the repetition, but also the commission of offences, we must inquire whether this discipline is calculated, in any great degree, to have this effect? Its peculiar characteristic is severity. We are told, indeed, that its actual application to individuals is not frequently required, because of the certainty with which punishment follows the offence; but the dread of it is always there, and the uplifted lash, although its stroke is avoided by submission, is, perhaps, as great a punishment as the actual pain, because it is attended with the moral suffering of degradation. We must repeat then that the nature of this discipline does no more than add severity to the punishment; and he must be blind to the uniform history of penal jurisprudence, who can believe that increased severity diminishes the recurrence of crimes. The same operation of the mind, to which I have alluded, that gives the energy of mental resistance to the sufferer, operates by a sympathy invariably called into action, on all who, by their state in society, their education or manners, have any feelings in common with him; and by the same system of severity, converts are made to religion, proselytes to impostures, and accessories to offences. The system, therefore, to judge from analogy, will not deter: Will it reform? Judging by the same rule, for, as yet, we cannot have, in any conclusive degree, the light of experience, I think it cannot. The force of habits on the mind is proverbial; but those which have this power, are such as were either formed in early life, or were produced by repeated voluntary acts; few instances, it is thought, can be found in which any series of constrained acts, have produced the habit of continuing them after the force was removed; but this part of the subject will be more fully discussed, when I shall explain the reformatory system contained

in the Code which I submit for consideration. I will only now remark that, so far as the force is applied to coerce the convict into a knowledge of some trade, by which he may earn a subsistence, so far it may produce amendment, but then if the same labour can be made a voluntary act, the skill attained in it will probably be more perfect, and undoubtedly there is a greater chance of its being persevered in.

I conclude then that this system, although it avoids the obvious defect of promiscuous confinement at night, and by the strictness of its discipline, prevents many of the evils attending associated labours by day; still has defects, that will not permit me to agree with the Committee of the Massachusetts' Society, in considering it as a model for imitation. Before I develope the features of the one, in which I think these defects are remedied, while all its advantages are retained; it will be necessary to examine the rival plan proposed in Pennsylvania. This consists in solitary confinement, strictly so called, by which, say the committee who proposed it, we mean "such an entire seclusion of convicts from society, and from one another, as that during the period of their confinement, no one shall see or hear, or be seen or heard, by any human being, except the jailor, the inspectors, or such other persons, as for highly urgent reasons may be permitted to enter the walls of the prison."** To carry this plan into execution a prison has been erected at Pittsburg, and another is nearly completed, on a most extensive scale, at Philadelphia. This last is most admirably contrived for perfect seclusion: the purposes of cleanliness do not demand the entrance of an attendant, or the egress of the prisoner. His food is furnished without his seeing the hand that brings it; and a complete inspection of every part of the cell is had, while the prisoner can neither see nor hear the approach of his keeper: all is silence and solitude, and, if these alone can work reformation, there was never a building better calculated to produce the effect. Whether labour is to be permitted or enjoined does not seem to be determined. There is a court, however, annexed to each cell, in

* Report, 1821.

which solitary labour may be performed, without much danger of communication between the prisoners. This system is simple, and has few details beyond those I have mentioned in describing it. The advantages expected from it are described in the report to which I have referred. Reformation, it is hoped, will be produced by the reflections inseparable from solitude: and the severity of the punishment is well described in the report, as one that will almost make the patient "*the victim of despair*," while he is "shut up in a cell for weeks and months and years alone, to be deprived of all converse—while he counts the tedious hours as they pass, a prey to the corrodings of conscience and the pangs of guilt:" and this, it is supposed, will effectually deter the convict from repeating his crime, and make the vicious fly from a region "*where conviction produces so much misery*." As the severity of the punishment is increased, its duration is proposed to be diminished; which will produce a saving that the committee believe will compensate for the loss incurred by the difference between solitary and social labour, if that should be allowed. It is evident, that here the contagion of evil associations is effectually prevented without the degrading discipline of the New York plan; that the security is more perfect, and at less expense; and, if they should make such relaxation from the strictness of solitude as to permit instruction and labour, that it is liable to much fewer objections than the other. If, on the contrary, the plan of the committee, in their understanding of what is meant by solitude, be carried strictly into execution, without instruction, without labour, those objections would be of the most serious nature. Their force will be better understood when I show in what points the plan I propose differs from those I have thus reviewed.

I premise that no plan of jurisprudence, combining the prevention of crime with the reformation of the criminal, has ever yet been attempted on such a scale as would embrace all the different stages and departments of criminal procedure. The only experiment that has been made, (what is called the penitentiary system,) has been applied solely to the substitution of imprisonment for other more acute bodily suffering as a

punishment after conviction, in the expectation that it would not only deter but reform ; and the results, during the first years of the trial, gave encouraging proof, that, if conducted on proper principles, it must have the most beneficial effect. But the wretched economy that refused the accommodations for separate confinement ; the exercise of the pardoning power, ill advised in many instances, in others resulting from a necessity created by that economy ; and the neglect of moral instruction ; co-operated to arrest the course of this first great improvement ; and all the different State committees unite with that of Pennsylvania, in the declaration, that the "great penitentiary system is no longer in operation." But this, even if it had been fully tried, is but one part (an important one indeed,) of a reformatory code that deserves the name. To be perfect in its object, such a system should begin by prescribing a plan of public education, not confined to the elements of literature, but extended particularly to the duties of a citizen towards the state, and of men towards each other in every relation of life, and to those principles of religion which are equally acknowledged by all sects. It would only be repeating trite maxims and acknowledged truths, were the necessity of an early education to be enlarged upon ; but it is its operation (when extended to all classes in society) in preventing offences, that is here considered ; early youth is the season in which the germs of cupidity are to be eradicated :

Eradenda cupidinis
Pravi sunt elementa : et teneræ nimis
Mentes superioribus
Formandæ studiis———

It is there our legislation on this subject must begin, if we wish that its foundation should be stable. A prejudice has been entertained against religious instruction in public institutions, from a fear of their being made the engines of proselytism to sectarian doctrines—a fear well founded in countries where there is a dominant sect, but utterly groundless here, where the only establishment is that of perfect equality, and where there would be no practical difficulty in leaving to the parents and pastors of every pupil, the care of instructing him in the

particular dogmas of his church, at the same time that the principles in which all concurred, might be inculcated in the public school not only as duties of morality but of religion. It is astonishing how little use has been made of this powerful, I might say, when properly used, this omnipotent engine, in promoting the temporal concerns of society, as well as the most important welfare of the individuals who compose it. When it has been called into action, it has been either in aid of temporal, often absolute power, or for the aggrandizement of a particular church. In our happy country no such result need be feared ; and if this important part of a system for diminishing offence was within the compass of my undertaking, I should offer the project of a statute on this subject, that I think would secure the most perfect equality of religious rights, while it added the inestimable advantages of religious sanction in the prevention of crime. These advantages cannot be placed in a stronger point of light than is done by a gentleman to whose publications on this subject I have been indebted for much information in fact, as well as instruction in argument. "If (he says) the infliction of human punishments were as certain as their promulgation, crimes would be prevented altogether. But as it is impossible for any Government to institute such a system of laws as can detect and punish all offences, the daring criminal perceives the imperfection ; and, trusting to his own precautions, and availing himself of time and circumstances, flatters himself with the prospect of impunity. Not so with the denunciations of Divine punishment ; which, when duly impressed on the mind, possess a sanction at which mere human authority can never arrive, and bring with them that *certainty of detection* and certainty of punishment, which alone can, in *all cases* and *under all circumstances*, prevent the perpetration of crime. If, then, we are once able to produce upon the mind a thorough conviction of the existence of one Supreme, Intelligent, Superintending Being, the Creator of all things, who sees through all his works, and perceives the deepest recesses of the human heart, and who *will reward or punish every one according to his deeds*, this will not only remedy the defects in mere human institutions, by providing that continual inspection, discovery, and

punishment, which such institutions endeavour in vain to supply; but will correct innumerable offences of every kind, which they do not pretend to punish, and which are wholly beyond their reach."** Such a plan of general religious instruction, embracing the doctrines common to all the Christian sects, and excluding all sectarian doctrine, is not mere theory. It has been for years practised in the City of Boston where nearly 100,000 dollars are appropriated to the public instruction of children of every denomination, and where the forms of religious instruction have been settled by the pastors of the several sects, on the principles I have laid down; and such success has attended this honourable and liberal experiment, that, although the schools have been in operation for more than ten years, and on an average more than three thousand have been educated in them annually, not one of those educated there has been even *committed* for a crime.† And in New York a similar effect has been observed. Of the thousands educated in the public schools of that city, taken generally from the poorest classes of society, but one, it is asserted, has ever been convicted, and that for a trifling offence.‡

I should apologise for drawing the attention of the Legislature to a subject that might seem foreign to the plan which this report is intended to elucidate, if public education were not found to be one of the best means of preventing crimes, and if the reflections here made did not apply to the instruction which forms so large a part of the prison discipline which I propose. Adverting, then, only to this as to a subject connected with, but not embraced by, the matter of this report, I pro-

* Roseoe. Additional Observations on Penal Jurisprudence.

† As far as the reporter is informed, the United States have given the first example, in modern times, of a provision for education, furnished at the public expense, to all the community. The early colonists of New England set the example; the system is coeval with the first settlement of Massachusetts, and has with the most enlightened spirit of legislation been adopted by other States. The liberal arrangement with respect to religious instruction is not confined to the period of ten years mentioned in the text—it was made much earlier; but the fact of its operation in preventing crime was derived from a gentleman, (S. L. Knapp, Esq.,) who spoke from knowledge, acquired during that period, by a personal attention to the schools, and a close professional attendance in the courts.

‡ Letter from Thomas Eddy to the commissioners, eighteen hundred and twenty-five, containing very judicious reflections on this subject.

ceed to develop the system which, after the maturest reflection, I have submitted for consideration. Its objects are extensive and many, but are so closely connected, that to strike out any one would destroy the unity that must give it effect. Instead of confining it, as has been hitherto done, to considering imprisonment and labour as the means of punishing crimes already committed, I draw the attention of the Legislature to the means of preventing them, by provisions bearing upon pauperism, mendicity, idleness and vagrancy, the great sources of those offences which send the greatest numbers to our prisons.

Political society owes perfect protection to all its members in their persons, reputations, and property ; and it also owes necessary subsistence to those who cannot procure it for themselves. Penal laws to suppress offences are the consequences of the first obligation ; those for the relief of pauperism, of the second ; these two are closely connected, and when poverty is relieved, and idleness punished, whenever it assumes the garb of necessity, and presses on the fund that is destined for its relief, the property and persons of the more fortunate classes will be found to have acquired a security, that, in the present state of things, cannot exist.

This truth has attracted the attention of most civilized nations ; but by always making the laws of pauperism a distinct branch of legislation, never connecting it with their penal jurisprudence with which it has so intimate a relation, it has been a source of more perplexity and confusion, and has given birth to more bad theory and ruinous practice, than any other question in Government. Many of these difficulties, it is supposed, will be obviated by the application of sound principles, before the evil has become so incorporated in the system as to make it difficult to be eradicated.

In relation to this subject, society is formed of two divisions ; those who by their industry or property, provide subsistence for themselves and their families, and those who do not. The latter must of necessity draw their support from the former, either by depredations on property, which bring them within the purview of the laws for punishing crimes ; or under the reality or pretence of pauperism by levying a tax on public or individual charity. It is to this last description that

I now draw the attention of the Legislature. They may be divided into three classes:—

Those who can labour, and are willing to labour, but who cannot find employment:—

Those who can labour, but are idle from inclination, not for want of employment:—

Those who are unable to support themselves by their labour, from infancy, old age, or infirmity of body or mind.

The first and last of these classes are to be relieved, not only by force of the obligation before referred to, but from a social duty not less imperative, because it is founded on humane feelings, and is enforced by perhaps the best precept of that religion which places charity in the highest rank of the virtues it inculcates. This relief must be given by providing means of employment for the industrious, and gratuitous support for the helpless. The middle class includes those who, under the name of vagrants and able-bodied beggars, are placed in society on the verge between vice and crime; vicious enough to require inspection and restraint; not so palpably guilty as to justify severer punishment; abounding in large cities, they are the hot-beds in which idleness and profligacy are forced into crime, and are properly the object of coercive justice: but they cannot become so without adopting the means necessary to distinguish and separate them from the innocently poor: and it is this necessity which brings that class also within the scope of the measures for preventing crimes. It was thought that a good system should not only restrain the vicious, and punish and reform the guilty, but, by relieving and employing the poor, put an end to one of the strongest inducements to commit offences. For these reasons the Code of Prison discipline provides, that a building shall be erected, to be called the House of Industry, with two distinct departments, one for voluntary, the other for coerced labour; the first department is intended as a place of employment for all those who are capable of gaining, by their bodily exertions, a complete or partial support; and for the few who are totally helpless. Its character, as a HOUSE OF REFUGE, will be hereafter explained; the second department is designated as a place in which vagrants and able-bodied mendicants shall be forced to labour for their support.

This establishment enters most essentially into the plan I propose. Its different departments, under the name of poor-houses, work-houses, and bridewells, are known not only in England and the States, which derive their jurisprudence from that country ; but in different parts of Europe: but they are there distinct institutions, and want that unity of plan from which it is thought their principal utility will arise. This requires elucidation. If the duty of supporting its members be once acknowledged to be one incumbent on society, to the extent that has been assumed, and if the classification I have made be correct, the necessity becomes apparent, of distinguishing in what degree the different applicants are entitled to relief ; but that system would be obviously imperfect that was confined to making this distinction, and granting relief only to the one class without making any disposition of the others. Every applicant, if my premises be true, must belong to one or the other of those classes ; and the same Magistrate who hears his demand of support, or before whom he is brought, on an accusation of illegally obtaining it, is enabled at once to assign him his place. Is he able and willing to work, but cannot obtain it ? here is employment suited to his strength, to his age, his capacity. Is he able to work, but idle, intemperate, or vicious ? his habits must be corrected by seclusion, sobriety, instruction, and labour. Is he utterly unable to provide for his support ? The great social duty of religion and humanity must be performed. One investigation on this plan puts an end to the inquiry. Every one applying for alms, or convicted of illegal idleness and vice, necessarily belongs to one or the other class, and immediately finds his place ; he no longer remains a burthen on individuals; and society is at once relieved from vagrancy and pauperism. Instead of this simple process, the poor laws are generally administered by agents whose duty is confined to a selection of proper objects of charity, without power to punish the impostor who preys on the fund provided for the poor and the helpless ; and without any means to enable the honest labourer or artisan to earn his subsistence. This establishment once made, on a proper scale, the plan for supporting it faithfully executed, the second degree in this scale of preventive justice will be obtained. By

the first, your rising generation will be taught habits of industrious obedience to the law, a respect for religion, and a love of justice and moral duties. By this, which is the second, those who have grown up without these advantages, those who have not profited by them, and the numerous class of adventurers from other countries, will be arrested in the earliest stages of their profligacy, and taught to be industrious before they become criminal.

I am not unaware that this plan is, in some points, founded on principles that are much questioned by many who have written on this part of social economy. Without making this report a vehicle for the full discussion of those principles, it will be necessary briefly to state the objections that have been made, with my reasons for not yielding to their force.

The policy, and sometimes the obligation, of a public provision for the poor has been forcibly assailed in England, and by men of high reputation here. The argument is shortly this. The duty to provide for the poor is rather a moral than a civil obligation: it binds, successively, relations, friends, wealthy individuals, and, last of all, society, which can be called on to support those only who are not provided for by individuals. But if this obligation upon society be once acknowledged and acted on, the individuals who stand in a nearer relation to the pauper will at once disregard a duty which has only a moral sanction, and the Government will have the exclusive charge of the burthen. And this, according to the argument, is not all: the certainty of an ultimate support will lead to idleness, extravagant speculations, imprudent marriages, and all the improvident acts that naturally produce poverty; and, in time, the number of paupers will be so great as to consume the resources of the State, or, if quartered on smaller divisions of the country, to reduce the individuals composing it nearly to the state of those whom they are forced to relieve. And the theory is supported by reference to England, where, at times, every fifth man is a pauper, and the poor-rates equal one-tenth* of the whole revenue of the kingdom.

* In the year 1821, the poor-rates were £7,325,611; the income £72,811,862; the number of paupers 2,193,423; and the whole population 12,218,500.

In a country with a population so great as to reduce the full price of labour to a bare subsistence, and at the same time employing that labour in the production of articles for which the demand is uncertain, there is no doubt that, at times, a permanent provision for the poor must be extremely burthensome on the community ; and, in such a country, an establishment to provide labour for all those whom the vicissitude of trade should throw out of employment, would be, perhaps, impracticable, and certainly very difficult of execution. But, besides its inapplicability to a different state of society, the argument is founded on the false principle, that the moral obligation of charity in individuals, whether related to the pauper or not, is superior in degree, as well as prior in the time of its exercise, to that social duty which every nation owes to the individuals which compose it ; which duty is not only protection, but mutual support. That society owes protection to all its members, is not denied. But what is that protection ? Certainly its chief object is life ; but, whether life be assailed by the sword or by famine, it is equally important for the individual, and for the community too, that it should be preserved. There are mutual obligations between society and the members which compose it, which are not written covenants ; they result from the nature of the connexion, from the objects to be attained by the association, which is, the protection of life and property. But the preservation of life is the first object, property is only a secondary one ; and, if a contract is to be supposed, can it be imagined to be of a nature that would impose on any one of the contracting parties the loss of that which it was the chief end of the contract to preserve ? and that, too, for the preservation to the others of a portion of that which was only the secondary object ? In other words, can it be supposed that any just contract could stipulate that one of the contracting parties should die of hunger, in order that the others might enjoy, without deduction, the whole of their property ? The obligation, then, if derived from the only source to which we can look for its conditions, includes support as well as protection ; and although this obligation may, by the operation of positive law, be justly modified by imposing the burthen of support on relations capable by their fortune of supporting it, yet, whenever these means

are either deficient, or have not been provided, the duty returns in its full force upon the community.

That this duty is sometimes very onerous, cannot be denied. A redundant population (by which I mean more people than can be so employed as to earn their subsistence) is a cause of this evil, that can only be avoided by emigration, when it is the result of a natural increase ; but, generally, it is the effect of false principles in political economy ; of that system which, by premiums and duties, pampers one branch of industry into an unnatural growth, and seduces so many to pursue it, that the market is soon overstocked with the proceeds of their labour, and they are then left to starve, or become the objects of public charity. A temporary foreign demand may also have the same effect ; but, in that case, the community, which must have been enriched by the effects of that demand, will be better able to bear the burthen, and ought not to complain that it is forced to give occasional support to the unfortunate instruments of its prosperity. But, in a country where the ordinary price of labour is more than sufficient for maintenance of the poor, they can only be a serious burthen in consequence of the want of true principles, or a good system of enforcing them: and the whole secret lies in the finding employment adapted to every applicant for relief. The number of those who are incapable in any degree of contributing by labour to their own support, is very small ; and it is evident that, when none are idle, the cost to the State will be only equal to the difference between the proceeds of such labour and the expense of support ; but the proceeds of ordinary labour are supposed, by the state of society, to be more than sufficient for maintenance ; therefore, making all proper deductions for forced labour, and the other disadvantages of public institutions, the proceeds of labour, then, if they are properly conducted, will not fall so far short of the expense as to create any fear of the ruinous consequences which attend the increase of the poor rates in England.

At present, the duty of supporting needy relations is, by the law as well of England as of the different United States, confined to ascendants and descendants only. To England this obligation, so as to oblige collaterals within the second, or per-

haps the third degree, to contribute to their support, would, it is thought, not only lessen the burthen on the public, but prevent, by the advice and interference of friends, those imprudent engagements which are the principal causes of poverty. Should it have this effect, it will lessen the weight of the objection that a public provision for the poor will increase the numbers, by rendering men adventurous in speculation, improvident in marriage, and careless in the conduct of their affairs. Most of the writers on this subject, state that this effect is produced by the poor laws of England ; but it would seem that the natural love of independence, and the sense of degradation inseparable from a reliance on public charity, would always prevent this provision being calculated on as a desirable resource ; and we might rather conclude that, the numbers who are reduced to this extremity by extravagance, would have been equally prodigal if no such provision had existed. However this may be in a country where the sense of shame is deadened by misery and extensive companionship in its degrading effects, and where support is afforded without exacting its equivalent in labour, it is believed that nothing of this nature need to be apprehended in one where the natural repugnance to live on charity is strengthened by the ease with which labour can procure not only support, but competence and ease ; and where the relief that it is proposed to afford, can only be procured by bodily exertions proportioned to the ability of the party. Such are the reasonings and facts on which I have ventured to propose, as part of my plan, the house of refuge and of industry. I deem it a most essential part of the system. As prevention, in the diseases of the body, is less painful, less expensive, and more efficacious, than the most skilful cure ; so, in the moral maladies of society, to arrest the vicious before their profligacy assumes the shape of crime ; to take away from the poor the cause or pretence of relieving themselves by fraud or by theft ; to reform them by education, and make their own industry contribute to their support, although difficult and expensive ; will be found more effectual in the suppression of offences, and more economical, than the best organized system of punishment. An offence perpetrated, incurs the loss sustained by

its commission, and frequently that of its repetition, added to the expense of its punishment. To prevent an offence requires only the previous expense of education and confinement. These reasons have induced me to suggest the plan of general education, and to combine with the system I offer, establishments for the relief of paupers, and the seclusion and instruction of the vicious and idle. These institutions, although they may conveniently be placed under the immediate direction of the same superintendent, are essentially different in their character: the one is a prison, the other a place of refuge. The object of one is instruction; of the other relief. Education and industry are ends common to both. Therefore, the regulations for the one prescribe strict seclusion and coerced labour; while the confinement and classification of the other is merely such as is necessary for the maintenance of order; and the only penalty for idleness is discharge, with the certainty of being classed in the next application for relief with those who are wilfully idle. The great objection usually made to establishments of this kind, is the expense. This, in a great measure, will be obviated by a wise and prudent administration, by which labour suited to every degree of strength and skill may be provided. In our country, there are great facilities for this: gardening, poultry yards, and the different occupations of agriculture necessary for the supply of a large city, offer employments of the most healthful kind, and in which some occupation suited to every individual may be found. Add to these, a brick or tile yard, a rope walk, chair making, all the manufactures of straw, cotton spinning, weaving, and other manufactures, of which more particular mention will be made when we speak of the penitentiary; and it will be seen that, by proper management, means may be found to employ all the tenants of this establishment, whether in the seclusion of the house of industry, or the more relaxed discipline of the house of refuge: few are so weak and infirm as to contribute nothing towards their support; and the great object will be, that there shall be no illness that is not the effect of infirmity. By these means, the actual expense will be much lessened, and the comparative account truly stated, between the cost of suffering them to live

in idleness by contributions levied upon private or public charge, or depredations upon property, and the expense of this establishment will show a balance greatly in its favour.

We are come to that part of the system of prison discipline applicable to penal law, in that restricted sense which confines it to the prosecution and punishment of offences. In the project which I submit to the Legislature, I begin with a part of the subject that has generally been most unaccountably, most injuriously neglected. The danger of vicious association is universally acknowledged; its corrupting influence has been pourtrayed by every figure that rhetoric could supply, and enforced by the most energetic language of eloquence; but its deleterious effects seemed to be feared only after condemnation, and no efficient plan has hitherto been adopted, or, as far as I am informed, proposed by any Legislature, to apply a corrective to it in the incipient stages of criminal procedure. Yet here, emphatically, it is calculated more widely to spread its infection. After condemnation there can be no association but of the guilty with the guilty; but, in the preliminary imprisonment, guilt is associated with innocence. The youth who is confined on suspicion only, whose innocence at the time of his arrest is attested by his subsequent acquittal, leaves the den where he was imprisoned, with tainted morals, depraved habits, passions excited to vengeance, and fit associates to aid him in pursuits that make his second entrance to the house of detention, only a passage to the penitentiary, or, in our present system, to the gallows. In our great cities, where this reform is most necessary, it seems least attended to. Vices the most disgusting, brutal intemperance, crime in its most hideous and appalling forms, are there congregated, and form a mass of corruption, rendered more deleterious from the mixture of imported depravity and native profligacy of which it is composed. The bridewell of a large city, is the place in which those representatives of human nature, in its most degraded shape, are assembled; brought into close contact, so that no art of fraud, no means of depredation, no shift to avoid detection, known to one may be hid from the other; where those who have escaped receive the applause due to their dexterity; and he who has suffered, glories in the constancy

with which he has endured his punishment, and resisted the attempts to reform him. Here he who can “commit the oldest crime the newest sort of way,” is hailed as a genius of superior order, and, having no interest to secure the exclusive use of the discovery, he freely imparts it to his less instructed companions. Thieves, and all the other offenders whose crimes are committed upon property, here receive the most useful instructions, not only for perfecting themselves in their vocation, but of proper objects on which it may be exercised; and the comparatively short detention of a larger majority, gives them the means of immediately practising the lessons they have received: for it may be fairly calculated, that, of those committed for trial, three-fourths* escape conviction after being detained just long

* In New York, in the year 1822, there were committed to the Bridewell prison, on accusations for crimes and misdemeanours, 2,361 persons. Of these, fewer than 541 were brought to trial, (for that is the whole number of persons tried, including those who were not committed but bailed,) of these 541, 180 were acquitted; which produces this result:

Committed for trial,	-	-	-	-	-	2,361
Convicted,	-	-	-	-	-	361
Discharged or acquitted,	-	-	-	-	-	2,000
In 1823, were committed,	-	-	-	-	-	1,92
The whole number tried that year was 599, of whom 177 were acquitted, so that the number convicted was	-	-	-	-	-	422
Total discharged or acquitted,	-	-	-	-	-	1,506
In 1824, committed,	-	-	-	-	-	1,961
Tried 586, acquitted 169, convicted	-	-	-	-	-	417
Total discharged or acquitted	-	-	-	-	-	1,544
In 1825, committed,	-	-	-	-	-	2,168
Tried 547, acquitted 161, convicted	-	-	-	-	-	386
Total discharged or acquitted,	-	-	-	-	-	1,782
In 1826, there were committed, to 20th November,	-	-	-	-	-	2,046
Add in the same proportion for the rest of the year,	-	-	-	-	-	227
						2,273

enough to receive instruction in all the mysteries of crime. This view of the danger of increasing guilt, by communication between the guilty in different degrees, has been often considered, and is in a great degree applicable to the association of convicts in a penitentiary as well as in those prisons we are now considering. But, when we add to it the serious consideration, that innocence and youth are at all times exposed to this contaminating influence : that laws which profess to preserve the morals and purity of the citizen, are made the instruments of their destruction ; what expression can be too strong to mark our astonishment at the apathy or indolence of legislators, who, knowing the evils of this system, can suffer it to continue, or who will not take the trouble to inform themselves on the subject ? Indiscriminate confinement preparatory to the trial, has, in this report, hitherto been considered only in its contaminating effects ; and those effects are sufficiently dreadful. But there is another view of its consequences, its inevitable consequences, which not only shocks the understanding, but lacerates the best feelings of the heart. The only discrimination made between the white tenants of these places of confinement, is that of the sexes. The women are kept in a separate apartment; the men in as many others as the prison can afford, but without any distinction between them. The innocent stranger, unable to find security, is joint tenant of the same chambers with three-times-convicted convicts ; vagrants sunk in vice, and brutified by intoxication ; perpetrators

Tried 662, acquitted 200, convicted	-	-	462
Total discharged or acquitted,	-	-	<u>1,811</u>

A much greater disproportion exists between the commitments and convictions in Great Britain ; but this is sufficient to show, that, in every year in one of our cities, from 1,500 to 2,000 persons of both sexes, all of whom are legally presumed to be innocent, and a large proportion must be really so, are annually forced, by the operation of the laws, into the closest association with the most abandoned of their species ; they must eat, drink, and sleep with them. They have no retreat from the infectious atmosphere of their society ; and, after having been thus forced to enter the school of vice and criminality, the 2,000 disciples are turned out to practise the lessons they have learned ! And this is the wise system of laws that needs no amendment ! This is the humane administration of them in a rich and enlightened city !

of every infamous crime; and even with murderers taken in the fact. Women of innocence and virtue are sometimes forced, by this unhallowed administration of justice, into an association with all that is disgusting in female vice; with vulgarity in its most offensive form; with intemperance sunk to the lowest depth of degradation; with every thing that can be conceived most abhorrent to female delicacy and refinement. This is no picture of the imagination: the reporter has seen it. It is realized in a greater or less degree in all the cities of the Atlantic States: and even legislators, patriotic statesmen, and benevolent philanthropists, who have for years been legislating, and reasoning, and devoting their time and talents to the application of solitary imprisonment to the purposes of punishment after conviction, have never yet taken one efficient step to prevent the demoralizing effects attending indiscriminate association before trial, or to rescue the innocent not only from the infection of such society, but from the punishment it inflicts. For what greater punishment could be devised for a man of education and morals, used to the refinements of good society, than to shut him up night and day, for weeks and months, in a room crowded with the vilest of the vile, with men stained with every crime? or to a woman, not sunk herself in vice, to be associated with the most abandoned of her sex? Yet such is the humanity, the justice, of our boasted jurisprudence. We begin by inflicting this moral punishment on one presumed, by the first principle of our law, to be innocent: we add to it the physical evil of close confinement, without any of the conveniences of life, for an unlimited period; and when perhaps his morals are corrupted by the society which the justice of his country has forced him to keep, and his health is destroyed by the rigor of imprisonment, his innocence is declared, and he is restored to society either to prey upon it by his crimes, or burthen it by his poverty. What greater moral or physical evil, it may be asked, would have been inflicted on the guilty, than this which the innocent is made to suffer? An eye-witness to more than one of the scenes he has described, and which, he repeats, are not exaggerated in the description, the reporter was deeply impressed with the necessity of a radical reform in the system of deten-

tion before trial, and has embodied it in the code which he presents. Persons whose liberty, for the good of society, must be restrained, are either those upon whom imprisonment is imposed merely for the purpose of securing their appearance when the purposes of justice require it, or those upon whom it is inflicted as a punishment.

The detention of those of the first description, to be just, must not only be necessary, but must be attended with no privation that is not absolutely required for the end proposed, and for the preservation of order.

Each of these two divisions is composed of several subordinate classes, for the government of which different rules are necessary. None are comprehended in the first, who are able to find a sufficient pledge that their personal attendance will be given when it is called for. The purposes of the projected code require, that those comprising this division should form three classes :

1. Persons whose testimony is necessary for the investigation of some important charge.
2. Those accused of misdemeanor.
3. Those charged with crime.

The first of these classes is separated from the two others by an evidently marked distinction. Those who compose it are not presumed to be guilty of any offence ; the temporary privation of their liberty is a necessary sacrifice for the safety of society ; it is taken on the same principle that justifies the appropriation of private property for public purposes, and it carries with it the same right of indemnity ; which indemnity the code does not fail to provide.

With respect to the two other classes, there is this difference, that, in these, there is a presumption of guilt, arising from an accusation on oath. The maxim, that every man is presumed innocent before conviction, is, like many other legal maxims, true only to a certain extent. In its application, it can mean only that proof must precede conviction, and that accusation alone is not one of those presumptions which throw the burden of proof on the accused, and cause him to be believed guilty, unless he shows himself innocent. But it is not true as respects persons accused on oath in a legal form. This is suf-

ficient to justify every measure for securing the person, because it creates such a presumption of guilt, as raises a probability of an attempt to escape punishment, and on the degree of this probability is founded the distinction between the second and third classes : the motive to attempt an escape being greater, in proportion to the magnitude of the punishment. For these reasons, the code directs that prisoners of the first class, to whom no offence is imputed, shall enjoy every alleviation of their misfortune, not incompatible with the maintenance of order, that their own means can procure. The second class being accused of an offence, punishable, when proved, by a comparatively light penalty, neither the temptation to escape, nor the evil consequences to society, should it be effected, are so great as to justify a rigor of confinement equal to that which is necessary to secure the third class, accused of crime. These degrees are distinctly marked in the code ; but it carefully provides that none of those comprehended in this division shall suffer any other inconveniences from their detention, than those necessary to secure their personal appearance, and to prevent the evil association, no less requisite to protect their own morals against the contagion of vice : for this classification is essential to the other and no less important design, which has been before stated in this report, that of separating the persons composing the two first classes from any communication with those of the third, and the individuals of this last from any intercourse with each other. The presumption, before alluded to, also justifies this measure. It is one of protection, from which the innocent have every thing to gain, and of which the guilty cannot complain: for it imposes no unnecessary restraint, and takes from them only the power of corrupting and being farther corrupted. The danger of guilty associations; the duty of avoiding them by a careful separation of the innocent from those who labour under presumption of guilt; of those accused or convicted of offences, implying no great degree of moral turpitude, from those who are presumed or known to be guilty of crimes which evince depravity of mind and manners ; of the young from the old offender ; are considerations on which the code of prison discipline rests ; and on the code of prison discipline depends the whole system of penal law. It is for this

reason that classification before trial has been provided for with the same care that is required after conviction ; and it has been particularly urged in the report, from a conviction that its importance in penal jurisprudence has not hitherto been properly appreciated. It is proposed, not only that the place for this confinement shall be separate from that in which it is inflicted as a punishment, but it is called, not a prison, but a HOUSE OF DETENTION merely, that the name may not carry with it any idea of infamous punishment. The marked distinction in the penal code, between crimes and misdemeanors ; the degree of moral guilt in the former, with which the latter is for the most part, not infected ; renders a correspondent difference necessary in the plan and nature of the punishment inflicted on them respectively.

After considering imprisonment as a necessary restraint merely, (the only just character which, before trial, it can have,) and showing the provisions in the code of prison discipline adapted to this end, it remains to be considered in its double capacity, as a punishment and the means of reform.

The nature, properties, and efficacy, of imprisonment, as a means of punishment, have been so fully discussed, in the introductory report to the Penal Code, that no more will be said here than is necessary to elucidate its modifications and combination with the reformatory part of the plan.

Of imprisonment, the Penal Code directs four grades :—simple imprisonment, simple imprisonment in close custody, imprisonment with labour, and imprisonment in solitude.

The two first are applied to offences involving no great degree of moral wrong, and therefore ought not to be confounded with others in which depravity is apparent. Some loss of reputation, when the laws are just, and impartially administered, necessarily is incurred by the infliction of every punishment. But disgrace ought to be attached to those only which are inflicted for crimes implying moral depravity. Hence the distinction which the law has drawn, and which the code of prison discipline must execute, between misdemeanors and crimes. To mark this distinction, different places, as well as a difference of treatment, are necessary.

It would be approximating these degrees of offence too closely

ly, to commit to the same prison the criminal and the misdemeanant. A man of worth and integrity may be guilty of breaking the provisions of mere positive law; but it would be confounding all ideas of proportion in punishment to conduct him to the same prison with the thief or assassin. A department therefore in the house of detention is designated for offenders of this description, whether the sentence be simple confinement or imprisonment in close custody. The discipline applicable to them is also necessarily different from that required in the penitentiary: as no great moral guilt is implied in the offences of which they have been guilty, and the detention is limited to short periods, so the imprisonment is intended more for punishment than reformation. In this, as in all other places of confinement, under this system, complete separation at night is strictly enforced; the means of education and religious instruction are provided; seclusion is graduated according to the sentence; good wholesome food and comfortable lodging are provided at the public expense; labour is permitted, but never enforced; vicious associations precluded, but close confinement never resorted to but when directed by the judgment, or rendered necessary to preserve the order of the prison. The distinction between simple imprisonment and confinement in close custody, is sufficiently explained in the Penal Code; and the precise rules laid down in the Code of Discipline for the treatment of prisoners under these punishments is calculated to prevent oppression, on the one hand, and, on the other, strictly to enforce the execution of the sentence. How different in its very nature! how infinitely so in its effects, is imprisonment, under these regulations, from the same punishment as usually inflicted for slight offences! The horrors of a bridewell have been faintly described; yet it is to such a place that the misdemeanant under the present system, in most of the States, is committed, to pass the period of his confinement without labour or instruction; and either in the congenial association with vulgarity and vice, to forget that he is in a place of punishment, or, shrinking from their abhorred contact, to find the physical evil of imprisonment increased beyond calculation by a moral evil which is inflicted without being ordained by the law: whereas, on the plan I propose, no

greater evil being suffered than precisely that directed by the sentence, and nothing left to the discretion of turnkeys or keepers, the judge is enabled, with a precision before impossible, to apportion the punishment to the offence. Heretofore, however slight the infraction of law that involved the penalty of confinement, an indefinite evil of bad association was necessarily annexed to it: and if a respectable man, for an imprudent breach of the peace, or for an intemperate expression in court, should be committed to prison for a few days, it depended on the accidental circumstance of the numbers in the bride-well, and sometimes on the disposition of the keeper, or, what is worse, on the wealth of the party, to determine whether he should pass those days in a comfortable apartment, making merry with his friends, or should drag them on in the society of felons. Now, the magistrate will know the extent of the punishment he awards. Simple imprisonment is defined: its privations, its indulgences, the penalties attending the abuse of them; every thing is accurately marked. Within certain limits traced by the law, these indulgences may be restricted or enlarged by the Judge, not by the jailer; according to the circumstances of the offence, not according to the caprice of a turnkey, or the capacity of the prisoner to purchase his favour. And simple imprisonment, the lowest grade of corporal punishment, formerly an engine of torture to some, to others a mockery of justice, to all the means of depraved and depraving associations, becomes, in the hands of a discreet judge, an elastic instrument of coercion that may be made to press on the smallest transgressions, or expand to fit the highest misdemeanor to which it is applied.

Imprisonment in close custody is the next grade; and here the same strict rules to limit the discretion of the keeper, are applied. In all the provisions of this code, the great truth is never lost sight of, that every evil inflicted beyond that which is necessarily included in the sentence, is illegal, is cruel, is tyrannical. Hence the care in the codes that are submitted, first, to make the judge confine himself in his sentence strictly within the limits of the discretion that is given him, and to exercise that discretion as much as possible by the application of the general rules that are prescribed to guide his judgment;

and afterwards, when he has pronounced, to take away all other discretion that might alleviate, increase, or in any manner alter, the punishment, except in the cases specially provided for. In the case of simple imprisonment in close custody, these rules and exceptions, it is thought, will be found to answer these ends. This grade of punishment is the last and highest of those inflicted for misdemeanors; as it is intended by the penal code to approach the severity, but not to be attended with the degradation, of penitentiary confinement in solitude, so the code of prison discipline, to give effect to this distinction, has prescribed a treatment that should mark, both to the sufferer and to others, that, although the law punished his act as an offence, and doomed him to a prison for punishment, and to solitude and reflection for repentance, yet it does not confound his offence with those which, by the general consent of the civilized world, has been characterized as infamous. This important distinction, fully discussed in the preliminary report to the penal code, is referred to here, only to mark the reason of the different places assigned to these two species of close custody, and to account for the different discipline by which they are respectively regulated.

We come now to the beaten ground of penitentiary discipline. The first remark necessary to explain the nature of that system I have ventured to recommend, is this: that the penal code assigns this punishment to no offences but such as suppose in the offender a depravity and corruption of mind which require the application of reformatory discipline as well as punishment—they must not be separated. And with the respect due to the great writers who have devoted their talents to this interesting subject, it may be permitted perhaps to suggest, that most of them err in considering the true end of penal laws to be either punishment alone, or reformation alone. A good system must combine them: and the great excellence of the penitentiary plan is, that the process of reformation cannot be carried on but by privations and sufferings, which, if they do not succeed so as to reform, must necessarily deter from a repetition of crime in as great a degree as any other bodily infliction could. If the reformation is complete, we have the double assurance arising from the moral restraint and the re-

membrance of the physical as well as mental suffering. As an example to deter others, penitentiary imprisonment has been considered to be defective in this, that here the real is greater than the apparent suffering ; whereas, it ought to be directly the reverse ; the apparent should exceed the real pain ; because the object of deterring others would be attained with as little injury as possible to the sufferers—it being a principle that no more evil than is necessary to produce that effect, ought to be inflicted. The principle is true when modified so as to require the real suffering to be sufficient for deterring the criminal himself, and the apparent not to be so great as to shock by a belief that it is cruel or disproportioned to the offence : but is the application of it to penitentiary imprisonment well made ? The prisoner is not, say those who use this argument, always exposed to view; and, when he is seen, his appearance may not indicate the suffering which he undergoes. The misery of a restraint for years, perhaps for life, cannot show itself in the few moments of a casual visit ; he appears well fed, well clothed, and the labour which he is seen to perform is moderate ; there is nothing therefore in the aspect of the man to show the wretchedness that must be created by a whole life doomed to forced labour and degrading subjection. In this reasoning, however, we lose sight of two operations ; the one going on in the mind of the convict, the other in that of the man upon whom his punishment is intended to be as an example ; both of which essentially lessen the force of this objection. By the first, the sufferer becomes by habit if not reconciled to his punishment, at least much better able to bear it. Some “strange comfort” finds its way into his cell, and illuminates it with a hope, which, though long deferred, does not always sadden the heart : employment interrupts uneasy thoughts during the day, and produces the total oblivion of them by sound sleep at night ; and the misery of confinement for life, spread in equal proportions over each day, is so much less in any particular time, that, in many cases, the apparent is greater than the real suffering of the convict. On the other hand, he who is tempted to offend, and may be restrained by the fear of punishment, will add to that which he knows to exist, but which he does not see, all those horrors by which

mystery always aggravates apprehended evils. Circumstances, too, may be superadded, to strike the imagination and increase this effect, without increasing the real suffering of the prisoner, while they augment its apparent intensity. Thus imprisonment, even tested by this rule, is far from being so inefficient an engine of punishment, whether considered as the means of deterring the offender himself or others, as the objection supposes. And, even if we should discard the idea of reformation, penitentiary imprisonment has advantages which few other modes of punishment possess. It is permanent ; the prison is always seen ; and even if we do not visit its gloomy cells, the imagination will people them with tenants of its own creation, more squalid in appearance, and hopeless and dejected in mind, than the real culprits who inhabit them ; these too will have enough of suffering, (discarding any but that authorized by law,) to leave a lasting impression, and to prevent, if any thing short of reformation can prevent, a repetition of guilt. Whatever advantages penitentiary imprisonment, however, may possess as a punishment, it is certain that all punishments, considered merely as such, have failed in preventing offences : and the severest have always, without exception, been found the least efficacious. But, if punishment alone is inefficient, the reformation of the offender, if it were possible to effect it without punishment, would be so in the same or a greater degree ; the reformation of one offender would have little effect on his fellows, unless indeed as an additional inducement to proceed : but to refute this argument is nugatory ; because no means of reformation have been proposed, or can well be imagined, that can be applied without imprisonment or other restraint ; but imprisonment or restraint is an evil to the sufferer, and all evil imposed in consequence of crime is punishment ; all reformatory discipline therefore is necessarily connected with punishment ; and it would, but for one consideration, be investigating the truth of a theory, inapplicable to the subject, if found to be true, were we to inquire whether reformation ought to be the sole object of penitentiary discipline. The consideration which alone renders the inquiry proper, and at the same time highly important, is this : that if reformation of the offender be the only object, and the example of

the punishment is not to be considered, then the endeavour, in establishing a mode of discipline, should be to render it as light as is possible, consistent with the end to be attained, which, by the argument, is reformation alone ; because it is a true principle, that no greater evil ought ever to be inflicted than is necessary to the end ; and therefore, if some Legislator, a proselyte to this doctrine, should believe that mild persuasion and indulgence were better instruments of reformation than coerced labour and restraint, and should act on this belief, the example of the punishment to deter, would be lost ; and though one convict might go out a real or pretended saint, seven sinners would pursue his track of profligacy, secure that, even if detected, instead of punishment they would receive only advice and indulgence. The doctrine, therefore, that reformation is the sole end of penitentiary punishment, deserves to be examined. If it mean the reformation of the culprit, and of all who might follow his example, (as the language used by one of its advocates* would perhaps justify us in believing,) the dispute is one only of words : for, if the punishment of one, or the reformation of one, prevents the other from committing the crime, it must be because he fears the evil of the reformatory discipline ; he is then deterred by the example ; and we arrive by different roads to the same point. But, more fairly considered, the argument is this : crime is an evil ; punishment is an evil ; to punish, therefore, is to multiply instead of diminishing it, unless it will deter the offender as well as others : but it is proved, by long experiment, that punishment has failed in this effect : therefore it is useless. Again, experience has proved, that severe are much less efficacious than milder punishments ; it is fair then to believe, that the more you diminish the severity of your laws, the more efficacious will be their operation : and by one consequence further, if crimes decrease in the same ratio with the severity of penalties, that it is not the penalty that deters ; and if it does not deter, it is not only useless, but wrong ; because we set out with the incontrovertible position, that this is the only legitimate object of punishment : if crimes have been diminished by peni-

tentiary imprisonment, then it could not have been the punishment that operated ; it must have been something else, and that something should be the great object to keep in view—it is reformation.

A great error at the bottom of all this reasoning is one already referred to, that reformation is considered abstractedly, without any consideration of the means by which it is to be brought about, which is the civil or the punishment of seclusion, and which is inseparable from it : another, not less striking, is, that, supposing reformation effectually to prevent a repetition of the crime by the offender, the reasoning gives us no means of discovering how this will operate to deter others, except through the fear of the reformatory discipline, which, being from its nature a punishment, is discarded by the argument from having any effect. The other fallacies are, first, in placing crime and punishment as evils of the same nature. Crime is an evil operating on society ; punishment, in the just degree that will prevent or lessen crime, so far from being an evil, is a good ; its pain is only felt by the delinquent : the immediate pain of the crime may, perhaps, only affect the individual sufferer by it; but the alarm it creates, the certainty that, unless repressed, it will be repeated, spreads through the whole community, and the uncertainty who will be its next victim, makes it an evil to all. The error lies in taking that for granted which is in dispute, that the dread of punishment does not deter from offences. And when that comes to be proved, it is done by another fallacy ; there have always been punishments, and there have always been and still are offences ; if punishment would prevent them, there would be none. But my argument is, not that punishment will totally prevent, but that it will diminish crimes ; and in order to prove that it has not this effect, it would be necessary to show a state of society in which there was neither punishment nor crime. Besides, to convince us that punishment in its nature can have no effect, it must be shown to have failed when applied in its most perfect form. But no one pretends that this experiment has been ever tried ; on the contrary, those who contend for its efficacy, when properly applied, have demonstrated, that, throughout the world, it has, in all ages, been wofully deficient. No one

has yet gone so far as to draw the conclusion, that, because mild have generally been found more efficacious than severe punishments, therefore no penalty ought to be annexed to offences ; and yet, if we assert that reformation is the only object, this is the plain and inevitable result : for then every pain, however small, inflicted as a punishment, would be a useless, and therefore an improper evil.

Imprisonment, therefore, is to be used, in the plan I propose, to punish as well as to reform. But to make imprisonment, especially if coupled with labour, a proper sanction, its details must be strictly defined by the law. Any discretion left to the jailer as to the mode of inflicting it, makes him, and not the Judge, the arbiter of the culprit's fate. He may, without proper limits to his authority, change the sentence of a few year's confinement into the same period of exquisite misery, followed by loss of health or of life ; and he may do this without incurring any penalty : for where a full discretion is given, there can be no penalty except in extreme cases, for its abuse. If he may, at his discretion, inflict stripes for disobedience or want of respect ; if, in the language held from the bench in New York, it is his duty, "by all the means in his power, to make the convicts feel the awful degradation and misery to which their vicious courses had reduced them," and "that the ordinary sympathies of our nature could not be extended to them ;" if this be permitted, or especially if inculcated as the duty of the keeper, imprisonment is the worst of all punishments, because the most unequal. It is, then, no more the wisdom of the law applied to the case by the discretion of the Judge that apportions the punishment, but the caprice or passion of an individual, in the exercise of the fearful duty of forcing a convict to feel the *awful misery and degradation* of his situation. If labour be superadded as a punishment, the danger of this discretion is greatly increased. The same labour may be misery and death to one, and no more than wholesome exercise to another ; and the greatest abuse and oppression may be justified by enforcing a literal execution of the sentence. The law, then, must, in every particular that can be foreseen, regulate the conduct of those to whose keeping the prisoner is to be committed : and after every precaution that human pru-

dence can take, the carelessness, or passion, or pride of opinion in the keeper, may greatly counteract the operation of a good system: and his intelligence, firmness, humanity, and strict attention, may correct some of the evils, and supply some of the omissions, which even the best cannot escape. For this reason the importance of this office is inculcated in the text of the code; and the qualities required for its exercise are pointed out as a guide to the selecting power, and a lesson to him who is chosen; that the one may not commit the fatal error of underrating the talents necessary for the employment, and that the other may feel the dignity with which he is invested, as well as the responsibility imposed on him by the law. This was the more necessary in order to counteract a prejudice against the employment of those to whom the custody of prisons has been for many ages confided:—a well-founded prejudice, while the jailer was only appointed to prevent the escape of the promiscuous assemblage of vagrants of both sexes, consisting of unfortunate debtors, of innocent or guilty prisoners committed for trial, and of convicted felons awaiting an ignominious death, who were placed in his custody; while he had no moral duty to perform, and was the mere Cerberus to guard the doors of a terrestrial Tartarus, such a prejudice was just and unavoidable; and as one part of the duty of a jailer, to prevent escapes, necessarily continues to be vested in the warden, the enunciation in the code becomes proper, in order to, break the chain of ideas which might otherwise, from that circumstance, assimilate the character of an office calling for high talents, and honour, and integrity, with that of an employment, the natural tendency of which was to make him who exercised it an extortioner and a petty tyrant.

I return to the position, from which I may seem perhaps to have digressed, that the law should be so framed as to restrict as much as possible the discretionary power of the keeper; it must designate the punishment due to the offence, either by an invariable rule, or by a discretion left to the Judge to make one within certain limits. The Judge must apply this rule, by declaring the punishment, if it be fixed; by apportioning it to the degree of the offence, if he have a discretion. The punishment once ordered, that system is strangely defective

which unnecessarily permits it to be aggravated or alleviated by an inferior officer, at his will. It deserves a worse epithet if it hold out temptations for him to do it ; and the strongest that could be used to express disapprobation, would be merited if it is inculcated as a duty. But the system of social forced labour makes this discretionary power unavoidable: for nothing, we are told, (and I believe told truly,) nothing but the lash can preserve the proper discipline in such an association. The punishment, then, necessary to execute the sentence of the law, on this plan, so far from being directed by the sentence, is one expressly prohibited by the law under which that sentence is pronounced, and therefore ought never enter into any subordinate part of the system. What could be more incongruous than to snatch the scourge from the hands of justice, to place it in those of caprice ; to declare it too severe, and degrading, and demoralizing, and unequal, to be applied as a punishment for CRIME, at the sound discretion of the Judge, and, at the same time direct, that it shall be inflicted for disobedience to a subaltern officer of a prison, at his pleasure ? I could not, therefore, offer any plan of imprisonment that would make this absurdity necessary. Other disadvantages, which are inseparable from this discipline, have been detailed when I described that of the New York prisons, of which it forms so prominent a feature. I discard it, therefore, being firmly convinced that, as an instrument of punishment, it is not only defective and dangerous, but that it cannot be brought to produce that reformation which is one of the essential parts of my plan. But social labour, whether general or in classes, (if those classes are at all numerous,) cannot be carried on without it, unless the security and order of the prison be put at hazard. Social labour, therefore, must be abandoned, or so modified, and admitted with such precautions, as to render this anomaly unnecessary. The manner in which this has been attempted, requires some previous examination of the principles on which it is founded.

We have, in former parts of this report, considered the question whether punishment, as an object distinct from reformation, should not enter into the sanction of penal laws ; and were brought to the double conclusion, that it was necessary,

and that no reformation could be produced without it. Imprisonment has been examined as a means of inflicting punishment; and in this and in the introductory report to the penal code, has been compared with other corporal punishments, and been found to possess, in a greater degree than any other, the essential properties to render it effectual. Here we need only add, that there is no other means by which a reformatory process (necessarily requiring time and a succession of operations) can be carried on ; no labour, no instruction, without detention ; no reformation without employment, without instruction, religious, moral, and literary. It must be remembered that we are now speaking of the prison discipline proper for convicts, for men already corrupted ; to whom, for the most part, labour was necessary for support, and who resorted to crime in order to avoid it. Labour consists of a number, of a succession, of bodily exertions, always painful when first endured, becoming tolerable only by the habit of making them, and never voluntarily resorted to but from the hope of some enjoyment they are to produce ; these two causes combined give to an occupation painful in itself, all the characteristics of a pleasurable pursuit ; habit destroys the sense of bodily pain ; hope anticipates the reward it is to bring, identifies the enjoyment with the means of procuring it, and, by a wise use of the faculties bestowed by our beneficent Creator, labour becomes cheerful, and its pain a pleasure. This might be further illustrated by investigating the cause of pleasure resulting from the chase, and other laborious recreations, which are often voluntarily pursued so far as to become toilsome and fatiguing in a degree not frequently suffered by the severest labour. In these pursuits, indeed, the exhilarating effects of fresh air, of society, and a view of the beauties of nature, give a present enjoyment that is not found in daily employment ; but these would never induce us to go beyond the point of agreeable exercise ; they are pushed into fatigue by the causes that have been stated, and by the self-satisfaction arising from a consciousness of dexterity and skill. The anticipation of the applause he will receive, of the festivity, or the domestic comfort, that awaits his return, is identified in the mind of the sportsman with the fatigue he undergoes, the pain of which,

habit has already alleviated ; so that the toils and the pleasures of the chase have become terms that are nearly synonymous.

The great painter of human passions has beautifully delineated this association, in the picture of a young lover toiling through a servile employment, with the hope of being rewarded by the presence of his mistress, and referring the patience and even the pleasure with which his toil was endured to this very illustration :—

There be some sports are painful, but their labour,
Delight in them sets off.

Whenever this association of ideas is broken, labour is regarded as an evil unmitigated by any alleviating circumstance ; no habit will induce a continuance of it; and it will never be resorted to but in moments of pressing distress, the idea of which then becomes incorporated with it and embitters its pains. Labour forced by stripes must always produce this dreadful concatenation of ideas ; and whenever the coercion ceases, the natural aversion to fatigue will combine with the remembrance of the evils with which it was embittered, and make the culprit fly to vice to forget, or to crime to avoid it.

If these reflections be well founded, employment should be offered as an alleviation of punishment, not superadded to aggravate it. Although labour is painful, yet the separate exertions, of a succession of which it is composed, are not so in themselves ; it is their repetition only which makes them irksome : there is an innate love of action in human nature, which renders its restraint the principal evil attending imprisonment : and involuntary idleness, unbroken by any mental or bodily occupation, creates a degree of suffering, which (setting aside acute physical pain) can only be aggravated by uninterrupted solitude. Solitude without physical employment may be rendered tolerable, if the mind can be diverted from its own reflections by receiving intellectual instruction from others, or amusement from books : these, also, except so far as concerns a future life, are indulgences withheld from the convict by the tenor of his sentence.

Next to the privations of liberty and employment, and perhaps superior in intensity to the last, is that of the usual in-

dulgence of the appetite for food and drink: to inflict this, so far as to make the patient suffer by hunger or thirst, would be at war with the first principles of this system; it would be causing an evil, the degree of which could never be measured so as to be directed by the sentence; and if left to the discretion of an executive officer, would cause a suffering not directed by the law or the Judge; and in most cases would change a sentence of confinement into one carrying with it loss of health or of life: food, therefore, wholesome in quality, and in abundance sufficient to satisfy the appetite and support life, but of the plainest kind, without any variety to stimulate, or delicacy to gratify the appetite, is allowed to the convict; but it is all he is entitled to; and thus another privation is added to those already enumerated, as concomitants of the punishment directed by law. But this is not all: men desire not only liberty, recreation, and the indulgence of the appetite; but also a shelter, and clothing, fitted to the variations of the seasons: and, in civilized life, there are certain refinements of indulgence in these articles, the privation of which becomes a severe punishment, when we are reduced to what is strictly necessary. The action of these natural inclinations, their restriction, and partial indulgence, constitute the moving power of my system of punishment and reformation.

Imprisonment, solitude, want of occupation, either for the mind or body, coarse aliments, hard lodging, clothing of the roughest kind, are the evils of which punishments are composed. Their duration, their intensity, their cumulation, are the means provided by the Penal Code for adapting them to the different offences: their alleviation in different degrees, are those designated in the Code of Prison Discipline for producing reform.

If the reasoning already employed be correct, no succession of involuntary acts, to which adults may be coerced, is likely to produce permanent habits of reformation: they must be the effect of the will, operated upon by the judgment, producing a conviction that such acts are beneficial: and experience must enforce this conviction, by giving the actual enjoyment of one, and the certain hope of other, benefits, which are the result of these acts. With evil habits, it is different: for the

most part they are acquired by a repetition of acts procuring sensual enjoyment; and the judgment has so little agency in producing them, that it must be silenced or perverted, before the acts of indulgence are done or repeated. It is for this reason, that the work of reformation is more difficult than that of perversion: the one requires intellectual power sufficient to prefer a distant and moral good, to a present and physical enjoyment: the other coincides with the natural propensity for present enjoyment, reckless of what an uncertain futurity may produce. And for this reason, also, it is, that the work of reformation is slower in its operation than that of corruption. A single instance, in which distress has been alleviated, or expected good has been realized, by labour or exertion, would have but a temporary effect: the operation must be repeated, and be made always to produce the same result, and the judgment must be thoroughly convinced that this result is invariable, before it can counteract in the will the natural preference of present enjoyment to future good. But to produce this effect, the mind must be improved by intellectual instruction; it must be taught that there are other pleasures besides those of sense: and religion must be brought to bear its part in the work of amelioration. The deep solitude of the prisoner's cell, the awful impression which must be made on his mind, by contrasting the fleeting enjoyment produced by his crime, with the lasting evil in which he is plunged by its consequences; the privation of factitious excitements; with no companions to applaud his perseverance in wrong; no means of drowning reflection by intemperance, no acute or disproportioned pain to brace him up against real or fancied oppression: the heart must necessarily be softened, the spirit subdued, and the mind prepared to receive those great truths, which, under such circumstances, may be inculcated to the highest advantage, more especially when this, combined with literary instruction, is offered, not as a part of the sentence, but as an alleviation of its rigor.

The spring, then, which sets in motion my whole machinery for producing reform, is this: that all the acts, which, by their succession, are to produce habits of good, are to be performed voluntarily, and are offered as alleviations of the severity of the

sentence : the will must act, or the repetition will produce no effect. But, to operate on the inclination, sufficient inducements must be held out to overcome the natural repugnance to labour : and this brings me back to the detail of those modifications of imprisonment, and its concomitant labour, which I offer instead of the strict seclusion of the Pennsylvania,* or the severe discipline of the New York system.

To understand them, a clear idea must first be given of the place of confinement. It consists of an arched cell for each prisoner, of small dimensions, but well ventilated, and comfortably warmed, communicating with a small court, surrounded with a high wall. The sentence of the law is confinement to the cell, supported by wholesome but coarse food, in sufficient quantity to satisfy hunger, but without occupation, and with no other society than the attendance of those officers who minister to the physical wants of the prisoner, and to his religious instruction. Privation of employment is denouneed as a part of the punishment ; and this circumstance, alone, would, with most men, cause it to be considered as an evil, and the experience of its effects will soon cause it to be felt as such ; of course it will be connected with the idea of suffering ; and occupation being denied, will, from the propensity to wish for that from which we are expressly debarred, be estimated as a good, and desired with an intensity proportioned to the strictness and length of the privation. To strengthen this natural desire, other inducements are offered. He who labours, lessens the expense of his support ; he who works skilfully and diligently, may more than repay it. The advantage of this beneficial result must be felt by the prisoner as well as the State : if the proceeds of his work should not be sufficient to cover his expenses, it yet produces for him a better diet ; and if persevered in, and accompanied with good conduct, for certain probationary periods of six and twelve months, during which he is permitted in the day to leave his cell and pursue

* Mr. Roberts Vaux, one of the Commissioners for building the new prison, a gentleman to whose instructive publications and conversation I am indebted for much useful information, has informed me, that the plan of strict seclusion, which I have quoted, has never received the sanction of the Legislature, and that there is a probability it will be so modified as to admit labour and instruction.

his solitary employment in the court, he is indulged with the privilege of working, and receiving instruction, in a small class, not exceeding ten; but, if he acquires such proficiency in his business, as to make the proceeds of his industry exceed the expense of his support, he is allowed the immediate enjoyment of a part, to be laid out in books, or such other articles as he may desire. Those of food or drink are excepted, in order to avoid irregularities, that would otherwise be unavoidable; and the residue of the surplus is an accumulating fund to be paid to him on his discharge. To give the greater effect to these inducements, they are not offered to the convict on his commitment to the prison. First he must know and feel the unmitigated punishment. His own reflections must be his only companions for a preliminary period, during which he is closely confined to his cell. He must live on the coarse diet allowed to the unemployed prisoner; he must suffer the tedium arising from want of society and of occupation; and when he begins to feel that labour would be an indulgence, it is offered to him as such. It is not threatened as an evil, nor urged upon his acceptance as an advantage to any but to himself: and when he is employed, no stripes, no punishments whatever, are inflicted, for want of diligence. If not properly used, the indulgence is withdrawn; and he returns to his solitude and other privations, not to punish him for not labouring; but merely because his conduct shows that he prefers that state to the enjoyment with which employment must always be associated in his mind, in order to produce reformation. If it has been shown that involuntary acts of employment will not produce a lasting habit, then, if there be any such as will not accept these alleviations of their imprisonment, upon them the imprisonment must operate solely as a punishment. But experience shows that these exceptions will (if any) be very few; for employment, even under the lash, is in most cases preferred to solitude.

It is no unimportant part of this plan, that education and intellectual improvement, as well as mere physical enjoyments, are held out as inducements for the exercise of industry, skill, and good conduct. These are to be rewarded by the use of books combining entertainment with instruction: the instru-

ments, and other means, of exercising the mind in science, or the hand in the delicate operations of the fine arts ; of developing talent or improving skill. Such pursuits offer, perhaps, the most efficient means of reformation, they operate by reconciling the convict to himself, which is the first and most difficult point to be gained. The daily exercise of mental powers, the consciousness of progress in useful knowledge, must raise him in his own estimation : and this honest pride, once set at work, will do more to change the conduct and purify the heart, than any external agency, however constantly or skilfully applied.

Let it not be said, that this is a theory too refined to be adapted to depraved and degraded convicts. Convicts are men. The most depraved and degraded are men : their minds are moved by the same springs that give activity to those of others, they avoid pain with the same care, and pursue pleasure with the same avidity, that actuate their fellow mortals. It is the false direction, only, of these great motives, that produces the criminal actions which they prompt. To turn them into a course that will promote the true happiness of the individual, by making him cease to injure that of society, should be the great object of penal jurisprudence. The error, it appears to me, lies in considering them as beings of a nature so inferior as to be incapable of elevation, and so bad as to make any amelioration impossible: but crime is the effect principally of intemperance, idleness, ignorance, vicious associations, irreligion, and poverty—not of any defective natural organization ; and the *laws which permit the unrestrained and continual exercise of these causes, are themselves the sources of those excesses which legislators, to cover their own inattention, or indolence, or ignorance, impiously and falsely ascribe to the Supreme Being, as if he had created man incapable of receiving the impressions of good.* Let us try the experiment, before we pronounce that even the degraded convict cannot be reclaimed. **IT HAS NEVER YET BEEN TRIED.** Every plan hitherto offered, is manifestly defective, because none has contemplated a complete system, and partial remedies never can succeed. It would be a presumption, of which the reporter's deep sense of his own incapacity renders him incapable, were he to

say, that what he offers is a perfect system, or to think that it will produce all the effects which might be expected from a good one. But he may be permitted, perhaps, to believe, that the principles on which it is founded, are not discordant; that it has a unity of design, and embraces a greater combination of provisions, all tending to produce the same result, than any that has yet been practised. Whether those principles are correct, or the details proper to enforce them, the superior wisdom of the Legislature must determine. But to think that the best plan which human sagacity could devise, will produce reformation in every case; that there will not be numerous exceptions to its general effect; would be to indulge the visionary belief of a moral panacea, applicable to all vices and all crimes; and although this would be quackery in legislation, as absurd as any that has appeared in medicine, yet, to say that there are no general rules by which reformation of the mind may be produced, is as great and fatal an error, as to assert that there are in the healing art no useful rules for preserving the general health and bodily vigour of the patient.

A reference to the text of the code is all that is necessary for the details by which it has been endeavoured to temper the rigour of solitary confinement, by useful employment and instruction, as a favour, to be withdrawn when neglected or abused; by the hope of enjoying society after a probationary period; and by the immediate rewards of labour and skill, in procuring social comforts and other conveniences. The indulgence of society in labour and instruction, which is offered as the greatest inducement to good conduct, has its value enhanced by the delay and perseverance in industry, which are prescribed as necessary to its attainment; and, when granted, the number in each class is so small, as to preclude the necessity of any severe discipline to maintain order, which it is supposed may be preserved by the precautions that are prescribed, by the fear of forfeiting the privilege, and by the advance towards reformation, which must be made before the indulgence is granted.

The average term of confinement may be assumed to be from four to six years for such crimes, affecting property, as are attended with no circumstances in their commission to

show greater depravity than the crime itself supposes. Of this time, six months must necessarily be spent in solitude, with no alleviation but labour; twelve more in the same confinement, unless a desire for intellectual improvement, (the evidence of the first step towards reform,) should have diversified it by intervals of social instruction; and the remainder of the term, in continuing those lessons, and in perfecting that dexterity in mechanical employment which is best acquired in society. A period thus passed, without any possibility of corrupting associations, with the daily experience of the actual enjoyments gained by diligence, hearing no precepts but those of religion, morality, and science; and those inculcated not in the harsh language of reproach, but in the mild yet firm accents of advice, pronounced by men who take an interest in the welfare of the convict; and with the cheering prospect of regaining, by honest industry, that good opinion of society, which no one ever lost without regret: a period thus passed, it is confidently believed, must efface bad impressions, must create lasting habits of industry and virtuous pursuit, must discharge the subject of this discipline from the prison a better, a wiser, and a happier man than he entered. But these happy effects will be counteracted; the care, labour, and expense, of your reformatory discipline, will have been uselessly incurred; if your proselyte to virtue and industry is to have the one exposed to the seduction of his former associates, and the other rendered useless by the want of means to exert it. *It will be in vain that you have given him the skill necessary for his support, if no one will afford him an opportunity of using it, or that you have made him an honest man, if all the world avoids him as a villain;* his relapse is certain, unavoidable, and his depravity will be the greater, from the experience that reformation has been productive only of distrust, want, and misery. “Seven evil spirits” will take possession of the mind that has been “swept and garnished” by your discipline, and “the last state of that man shall be worse than the first.” To avoid this result, so destructive of the whole system, an asylum is provided in the House of REFUGE and INDUSTRY, (the other departments of which have been already described.) Here the discharged convict may

find employment and subsistence, and receive such wages as will enable him to remove from the scenes of his past crimes ; place him above temptation ; confirm him in his newly acquired habits of industry; and cause him safely to pass the dangerous and trying period between the acquisition of his liberty and his restoration to the confidence of society. Independently of this resource, the industrious convict receives, at his discharge, a proper proportion of his surplus earnings: he receives friendly advice as to his future pursuits, and a certificate (if he has merited it) of such conduct as will entitle him to confidence. The consequences of reconviction are solemnly represented to him : and his conduct, if he remain in the neighbourhood of the prison, is carefully watched, so that if he return to habits of idleness and intemperance, his career to crime may be stopped by a commitment to the House of Industry as a vagrant. The cause, the temptation, or the excuse for relapse, being thus removed, it is hoped that instances of return to vicious pursuits will become more rare ; and that many will become useful members of society, who, under the present system, either burthen it by their poverty, or prey upon it by their crimes. The House of Refuge is rendered the more necessary, because a man of prudence will no more receive or employ a convict discharged from one of our present penitentiaries, than he would shut up with his flock a wild beast escaped from its keepers : but the reformatory plan, once fairly in operation, its principles studied, developed, steadily adhered to, improved by the light of experience, and its beneficial effects upon morals perceived, the man who has undergone its purifying operation will, in time, be no longer regarded with fear or contempt; and society, by confiding in his reformation, will permit him to be honest ; the House of Refuge will then become less necessary, and its expense of course diminished.*

* This theory is confirmed by experience in the House of Refuge at New York. Although admission into that school is obtained only by vagrancy on conviction; yet, such reliance is placed upon the reformatory effect of the discipline, that the applications for apprentices of both sexes are so numerous that they cannot be complied with. Nor is the confidence misplaced, a single instance only having been known in which the employer was dissatisfied with the conduct of his apprentice. After making all due allowance for the docility of children

Before I quit the consideration of this establishment, it may be necessary to dispose of an objection sometimes raised to it, as well as to the Penitentiary: that the products of mechanical operations, which may be carried on there, will be sold cheaper than they can be afforded by the regular mechanic, who is burthened with the support of a family, with rent, taxes, and other charges, and thus injure the innocent in order to find employment for the guilty. This objection could only have weight if all the convicts were employed in one business, and that in a country where there is a greater supply of labour than there is demand for it; but here the very reverse of this is the fact. Again, if all the convicts should be employed in a single occupation, it must be because there is an excess of demand for that species of labour over the supply: and, while that continues, there can be no injury: when that demand is reduced, the business will be abandoned both within and without the prison. As respects the public interest, there can be no doubt; for the question reduces itself to this: Whether the convicts are to be maintained in idleness, or suffered to contribute by labour to their own support? And even as regards particular classes of mechanics, the same reasoning which would prevent their trade being carried on in prison, would go to show that it ought to be limited without. But the best answer to the objection is, that experience has never realized any of the evils that have been apprehended.

Having passed through the different stages of confinement with the prisoner committed for a term; having shown the hopes and fears, the occupation, instruction, and discipline, by which he is to be punished and reformed; and, having unlocked the door of his cell, and restored him to the world a renovated man; we must return, once more, to the interior of the prison, to visit those who have by their atrocity rendered it unsafe to trust them in that society, the very existence of which their crimes have put to hazard. They are those whose offences are now punished with death. Reformation enters no farther into their treatment than as it concerns them individ-

the same effects may reasonably be expected, in a great degree, upon adults, by a longer and severer course of discipline

ally. Shut out for ever from civil society, its laws provide no means for their future employment; it is indifferent as to their habits, and solicitous only that, for their own sake, they should make their peace with Heaven: for, in avoiding to punish with death, it would not "kill the soul."

The confinement of this class is intended for two purposes only: First, by actual restraint, to secure society against a repetition of the crime. Next, to deter others from committing a similar one, by the severity of the punishment. These two purposes are attained by absolute seclusion, under circumstances varied according to the enormity of the offence. These circumstances are calculated to strike the imagination with horror for the crime, without awaking any dangerous sympathy for the sufferer. A gloomy cell; inscriptions recording the nature of the crime and the intensity of the punishment; so much of mystery as excites the imagination; real suffering, enough to deter when the veil is withdrawn, not so much as to enlist the feelings of the community and make them arraign the cruelty of the law; perfect security from escape; a gradation in the discipline, to show, by strong features, the different degrees of atrocity of the crime; such are the characteristics of the punishments substituted for that of death, now inflicted for the different species of capital homicide. These convicts are considered, for many purposes, to be as much dead to the world, as if no commutation of their former punishment had been made: their property is divided among their heirs: they are buried in their solitary cells, and their epitaph is contained in the inscription that records their crime, and the daily renewal of its punishment. Their existence is preserved by the policy of the law, for reasons which it has proclaimed; and, although they are kept within the reach of the pardoning power, yet that policy will be counteracted by any remission of the sentence, the case of acknowledged innocence alone excepted.

Those who are confined for life, for a repetition of minor offences, are considered more in the light of incurables, than atrocious offenders whose ferocious disposition makes perpetual restraint necessary for the peace of society. Yet a very long and uninterrupted curative process, may sometimes succeed in cases that were deemed desperate: and the subjects of this ob-

servation have, therefore, the same advantages of instruction and employment offered to them, that are given to the other convicts, in the hope that, by unequivocal evidence of reformation, after a very long probationary period without relapse, they may be discharged by the pardoning power. It is highly important, however, that this should not be lightly or frequently exercised. Few circumstances have tended more directly to disappoint the friends of the penitentiary system, than the counteractive operation of this prerogative : parsimonious legislative provisions have furnished an excuse for its exercise, to a degree, that renders every attempt to punish or reform by imprisonment, equally abortive ; and, *if the unhappy facility of granting pardons, be not checked, it is in vain to hope that the best organized plan will produce any good effect.* Restraint will be suffered with impatience ; instruction will be unheeded ; labour neglected ; and counsel derided, while the mind is kept in the feverish state of expectation, which the daily release of fellow convicts, more guilty, perhaps, but better befriended, must produce on those who remain. In some States, this abuse has become so prevalent, that the culprit has not only in his favour the chance of escaping detection, or, if detected, the chance of acquittal ; but, after conviction, it has become more probable that he will be discharged by pardon,* than that his sentence will be executed. With so many chances in his favour, the felon continues his game without fear or scruple. The prison loses its terrors as a place of punishment ; and its discipline becomes a mockery to those who remain, cursing their ill fortune, and hoping that, in the next lottery of pardons, they may gain the prize of discharge. Before I passed from the penitentiary discipline to another branch of my subject, it was necessary to advert to this radical, and, unfortunately, in most of the States, this Constitutional evil, to which, of course, no other remedy can be applied by the Legislative, than the voice of expostulation with the Executive power. A very able report on this subject, made by the di-

* In five years, SEVEN HUNDRED AND FORTY CONVICTS were discharged by pardon, from the New York prison, and only SEVENTY-THREE by the expiration of their sentences, making the chance of impunity after conviction, more than ten to one in favour of the convict.

rection of a society for the prevention of pauperism, in the City of New York, in the year 1822, contains the opinions of the most celebrated jurists and magistrates in every State in the Union, all of whom concur in stating frequent pardons to be the greatest obstacle that the penitentiary system has to encounter. Out of it has arisen another evil ; soliciting pardons, has, in some places, become a business : men who disgrace an honourable profession, hang about the doors of the prison, bargain with the convict, to be paid, perhaps, out of the proceeds of his crime ; by importunity or false statements, procure the signatures of respectable men to petitions ; deceive the Executive power by false allegations of reformation ; and procure the pardon of the most hardened offenders ; who use their liberty only to commit new depredations, in the hope of again being released ; and, strange to tell, this hope has been realized after a second and even a third sentence. Out of sixteen committed for a second offence, to the New York Penitentiary, in 1825, ELEVEN had been discharged by pardon ; and of those committed in the same year, for a third offence, EVERY ONE had been previously TWICE pardoned. To arrest, if possible, the progress of this abuse, which totally counteracts every attempt to punish or reform, the text of the Code is made to express the wishes of the Legislature, and a provision is introduced, making the soliciting of pardons, for reward, a punishable offence.

One other institution remains to be described ; one of perhaps quite as much importance as any other in the system. It is the SCHOOL OF REFORM ; designed for the confinement, discipline, and instruction of juvenile offenders and young vagrants. Of all the establishments suggested by the charity, and executed by the active and enlightened benevolence of modern times, none interests more deeply the best feelings of the heart. Whether we consider the evil avoided, or the positive good bestowed, it is equally worthy of our admiration.

The provisions of law have heretofore denounced the same punishment against the first offence of a child, that they awarded to the veteran in guilt : the seducer to crime, and the artless victim of his corruption, were confounded in the same penalty : and that penalty, until lately, was here, and in the

land from whence we derive our jurisprudence still is—death. We have substituted imprisonment; but our laws make no other distinction between adults and children, than that contained in the common law, by which all above a certain age, and that a very tender one, are supposed to have sufficient discretion to know both the law and its penalty; and as to those who have not attained that age, it is a matter of inquiry to be determined by evidence: and an instance is recorded, in which an infant of NINE YEARS was convicted and EXECUTED FOR MURDER. For the minor offences, affecting property, indictments against children are frequent: and humanity is equally shocked, whether they are convicted, or, by the lenity of the jury, discharged, to complete their education of infamy. In the Penal Code which you have under consideration, some material changes are introduced on this subject: an age is fixed, below which guilt cannot be supposed: and the inquiry as to discretion can only take place when the accused is above that age, but below another, at which sufficient capacity may always be presumed. It also contains other provisions, which govern the case in which a child does the prohibited act, in the presence, or under the influence of a parent or superior. But, with all these modifications, nothing materially good, under this head, would be effected, if, after conviction, the same discipline were indiscriminately applied to children and adults. The necessity of a different course, whether for punishment, or education, or reform, is so clearly pointed out by nature, that he must be an inattentive observer of her laws, who does not perceive it; and it should be considered, that when a child of tender age commits an offence against the law of society, he acts, for the most part, in obedience to one which with him has a paramount force—that of nature—who has given him strong desires to possess, an ardent passion for novelty, and a free spirit, that with difficulty submits to restraint; while she has withheld that discretion which alone can give a voluntary control over those passions. For acts committed before this discretion is acquired, or when, by the visitation of Providence, it is taken away, it is unjust to punish, although the good of society requires that we should restrain. Paternal, or any other authority that represents it, stands in the place of this

discretion, until it is conferred by instruction, experience, and the natural expansion of the faculties. To this domestic law-giver and judge, is confided, during this interval, the task of repressing all the faults of infancy ; and when they become hurtful to others, he, not the child whom he ought to have restrained, is answerable ; civilly, if the injury were done without his connivance or permission ; criminally, if it were. These are the dictates of most laws, applicable to a period of infancy more or less indefinite, according to different systems ; but, after that period, they all abandon these sound principles, and hold the child personally accountable to the penal law ; and if he has shown dexterity in committing the crime, or used shifts to avoid detection, it is, by the common law, counted sufficient evidence of a consciousness of moral guilt, and of a discretion that ought to have prevented the offence. But they do not consider that the moral sense is, in childhood, produced by instruction only, and the force of example ; and that, with the children who are generally the objects of criminal procedure, instruction has either been totally wanting, or both that and example have been of a nature to pervert, not form, a sense of right ; so that, if the want of discretion entitles to the protective power of the law, it is due to the adolescence of such children quite as much as it is to their infancy. Either they have parents who entirely neglect the task, or abuse the power given to them by nature, and confirmed by the laws of society ; or, without relations, they are thrown friendless and unprotected into the most contaminating associations, where morality, religion, and temperance, are spoken of only to be derided, and the restraints of law are studied only to be evaded. In either of these cases, these unfortunate victims to the vices of others, have a right to demand that the community shall supply the place of their natural protectors, and teach them the sanction of the law before they are punished for its breach. In a country governed by wise laws, faithfully executed, this class of children would be very small. Moral, religious, and literary education would be brought, in such a country, within the reach of every individual ; and he would be forced to avail himself of these advantages ; ours, in this respect, is not yet such a country. We are rapidly advancing towards this de-

gree of perfection ; but, until we attain it, the defect in this part of our system increases the obligation on the community to be a father to the fatherless ; to snatch the innocent child from the hands of depraved parents, and the orphan from the contamination of vice and infamy ; and, instead of harsh punishments, inflicted for offences which its own neglect of duty has occasioned, to remove their cause by the milder methods of instruction and useful employment.

The place for the confinement of juvenile offenders, for these reasons, is to be considered more as a school of instruction than a prison for degrading punishment ; a school in which the vicious habits of the pupil require a strict discipline ; but still a school, into which he enters a vicious boy, and from which he is to depart a virtuous and industrious youth ; where the involuntary vices and crimes with which his early childhood was stained, are to be eradicated, their very remembrance lost ; and, in their place, the lessons inculcated, and the examples given, which would have guided him, had the duties of nature and society been performed. From hence he begins his career of life ; and as it would be unjust to load him on his outset with the opprobrium which would be inseparable from an association in the same place of punishment with hardened offenders, it became necessary, as well from this circumstance, as from the different nature of the discipline, to separate this entirely, both by locality and name, from the other prisons.

To argue the utility, or to descant on the humanity, of this establishment, after demonstrating its justice, would be a useless task. Every mind that has investigated the causes and progress of crime, must acknowledge the one, every benevolent heart must feel the other. And even economy, cold calculating economy, after stating the account in dollars and cents, must confess that this is a money-saving institution. If it is wise to prevent a hundred atrocious crimes by removing the opprobrium of a venial fault, and substituting instruction for punishment ; if it is the highest species of humanity to relieve from the misery of vice and the degradation of crime ; to extend the operation of charity to the mind ; and to snatch with its angel arm innocence from seduction ; if it be a saving to society to support an infant for a few years at school, and

thereby avoid the charge of the depredations of a felon for the rest of his life,* and the expense of his future convictions and confinements ; then is the School of Reform—a WISE, a HUMANE, and an ECONOMICAL institution.

I need not enlarge this report by the details for the government of this school ; they are minutely contained in the code. One principle pervades the whole, which has been sufficiently enlarged upon : that the offences of children may be sufficiently corrected, both for the ends of punishment and example, by education and employment. If this be wrong, the whole plan must be remodelled ; but in establishing it, I have been guided by something better than the best reasoning. In the city of New York there is an establishment of this kind, which can never be visited but with unmixed emotions of the highest intellectual pleasure. It now contains one hundred and twenty-

* “ There is hardly a child who will be condemned to it, [the New York House of Refuge,] who, if left to the course which would bring him to it, would not finally be supported by the State as a convict. The evidence of this is, that a very large proportion who are now confined in our State Prisons, commenced their career in crimes when they were children, in some of our large cities. One person, in particular, who is now confined in the prison in Auburn, was first convicted when he was only ten years old ; and has since been, at different times, TWENTY-EIGHT years a convict, supported by the State, at an expense of not less than two thousand dollars.”—*Report of the New York Committee.*

In the Arch street prison at Philadelphia there is now awaiting his trial, for felony, a boy of eleven years of age, who had already passed a year in the penitentiary of New Jersey for horse stealing : during this period the only lessons he received, were the details given by his fellow convicts of their exploits; some of which he repeated to us, with a satisfaction but ill repressed. I cannot avoid adding to this note an extract from a report on the state of the French prisons made by Mr. Deappert, which strongly exemplifies the necessity of a complete separation of juvenile from other offenders. “ There were in the same room (at Douay) several youths who had been sentenced to imprisonment by the correctional tribunal, together with men of different ages, and also a man condemned to death for murder ; he requested to speak to me in private ; “ I wait,” said he, “ the moment of execution ; and since you are the first person who has visited us, I wish to address you with confidence, and to conceal nothing from you. I am guilty of the crime for which I have been condemned. I have committed robbery and murder. From my infancy my parents neglected me. I fell into bad company ; *my undoing was completed in a prison* ; and I am now about to expiate all my faults. Among the persons whom you see in this room, there are some youths, who, with pain I observe, are preparing themselves for the commission of new crimes, as soon as the term of confinement expires. *If you could get them removed into a separate room this, Sir, would be the greatest benefit that you could confer upon them.* ”

five boys and twenty-nine girls, for the most part healthy, cheerful, intelligent, industrious, orderly, and obedient; animated with the certain prospect of becoming useful members of society, who, but for this establishment, would still have been suffering under the accumulated evils attendant on poverty, ignorance, and the lowest depravity, with no other futurity before them than the penitentiary or the gallows. I ought not to omit mentioning here, that the female department is superintended by a visiting committee of Ladies, who, at regular and frequent periods, examine the school, converse with the scholars, encourage the diffident, reprove the disorderly, reward the industrious, and inspire all with their own virtues. The code I submit, invites a similar superintendence, from which the highest advantages, such as nothing but the benign influence of female character can give, are expected.

The plan of indenting the scholars to useful trades has been recommended, from the practical effect that has been observed at New York. It might at first be supposed, that an aversion would be found to taking apprentices from such a place; but experience has proved that the confidence inspired by the mode of education pursued, is so great, that applications are more numerous, for children of both sexes, than the rules of the institution will permit them to supply. And, although twenty-eight boys and fifteen girls have been indented, the most favourable accounts have been received of their behaviour; two, having received what they thought ill usage from their masters, left them, but returned to the School; and only one has resumed his former bad habits. What renders the reformation of these children the more extraordinary, is, that thirty of them had before been sentenced to the Penitentiary, from one to five different times. A register is kept of the behaviour of the different boys, and of as much of their previous history as can be discovered. Extracts from this are annually published, and they contain a number of facts of the most interesting kind; all proving the practical utility of the plan. Some of these are selected from the last Report of the Managers.*

* "W. H. O.—This boy's history exhibits one of the most striking instances of juvenile depravity that we have on the records of this Institution. He, at the early age of nine years, commenced his career of stealing, and with the assistance

It will be observed, that, contrary to the rules laid down for the Penitentiary, personal castigation is permitted in the

of some, more hardened and older in crime than himself, he continued it for three years, with the most undeviating success. Of his short life, two and a half years, in three separate terms, have been served in the Penitentiary, besides having been several times in Bridewell. The associations he formed in those schools of vice, instead of reclaiming him, served only to strengthen his vicious propensities, and, at his discharge from them, he recommenced his predatory acts, with renewed skill; in short, with him stealing seemed to be an instinctive principle. Thus he continued until the establishment of this institution. He fortunately became one of its first inmates. Upon his introduction he evinced a settled determination to escape, (in which he succeeded three several times.) The most rigid treatment was for a long time successfully applied. At length he began gradually to yield to the restraints, and submit to the regulations required of him; from January to December, 1826, he so far improved that we considered him one of the most amiable boys in the house; the person who contracted for his services, said, that his attention to his work was such as to afford him much pleasure; that he was entirely obedient, agreeable, and active in the discharge of his duties. Conceiving that the object of the institution, in the effect of his reformation, was completed, and that a better state of mind could not be effected in William, he was indentured to a highly respectable mechanic, living in Connecticut. Some time previous to his indenture, he was asked whether he would ever redarken his character by the commission of crime, if selected to be bound out; his reply was, that he was then influenced by the *wicked one*, but that he now felt his mind to be in a different channel; and if a modest and humble deportment for several months, together with a knowledge of his frequently practising devotional exercise, are proper criteria by which to judge, we feel perfectly safe in saying that William was truly an altered boy. Since his indenture, a very favourable report has been received from him."

"S. T.—Aged sixteen years, born in Patterson, N. J.; he lost his father and mother when quite young, after which he was left to the care of guardians, who neglected him. He in a short time acquired a degree of celebrity among his companions, by his skill in stealing old rope, iron, copper, &c. from around the docks. His career, however, was made short by the superintending care of the city authority, by whom he was committed to the Alms House, as a vagrant. He twice escaped from that institution, and when retaken the second time, he was sent here. Soon after his commitment it became evident that the discipline of the house was all that was requisite to make him obedient. After conducting himself to the entire satisfaction of the superintendent, he was indentured to a farmer in the country. Since his indenture we have been informed by the gentleman with whom he lives, that "he is industrious, attentive, and kind; and such is the state of his mind, as relates to religion and morality, that he will reprove his men for using profane language, in a prompt, though modest and becoming manner, often referring to the precepts he received from his recent friends."

"D. B. L.—Aged fifteen years, born in New York, committed from the Yards, on suspicion of having stolen a shawl. He was brought up in the vicinity of Bunker Street, and for some months played the tambourin in those receptacles

School. This exception was introduced because the infliction of that punishment in childhood, is not attended with the de-

of vice and misery, the dancing-houses of Corlears Hook. He acknowledges having stolen some few articles, but denies stealing the article for which he was sent here. From the time he was committed until his discharge, he conducted in an entirely satisfactory manner. In October he was indentured to a respectable gentleman residing about sixty miles North of this city."

" L. S.—Aged about sixteen years, born in Ireland; his parents emigrated to this country about eight years ago. His father has since died. His education was entirely neglected by his parents, and the choice of his companions left exclusively to himself. He has worked at several mechanical branches of business, to none of which his restless disposition could attach itself. He was committed to the Refuge in March, 1825, from the Police Office, for stealing a copper kettle, for which he had been confined in Bridewell eight days, (where he had been four times before.) The character of a notorious thief cannot with justice be attached to this boy, though he had been an habitual pilferer for several years. Upon his entry into the house, he gave no evidence of a disposition palpably wicked ; yet he was a source of much trouble to the superintendent ; in mischief he was almost invariably first : to the rules and regulations of the house he was perfectly indifferent, and in one instance he absconded. After a few days he was returned, severely punished, and put in irons for forty-three days, when his irons were taken off. In December, 1825, his improvement was so great that he was promoted to the situation of night watch, and day guard, the duties of which he faithfully performed until July, 1826, when he requested to be sent to sea; his request was complied with, and he was indentured to a highly respectable ship owner of this city. After an absence of three months, he returned to the Refuge on a visit, stated that he was perfectly contented with his situation, and that he had often reflected while at sea, that, instead of enjoying the blessings of liberty, he might have now been in State Prison, had it not been for the establishment of a House of Refuge."

" D. S.—Aged fifteen years, born in New York; his father died while he was yet an infant ; his mother since married an oysterman, now living in the vicinity of Bancker Street. David has lived with three different persons, who kept oyster-cellars; after leaving them, he returned to his mother. He commenced his thefts by stealing wood from about the docks; has also been in the habit of stealing old junk, copper, &c. He has been three several times committed to Bridewell, the last time for stealing a copper kettle, in company with the foregoing boy; it was for this offence that he was committed to the Refuge. He was at first very refractory, constantly plotting how to escape, and endeavouring to persuade others to accompany him. He was for some months treated with much strictness; from June, 1825, to February, 1826, his conduct was entirely satisfactory; at this time an opportunity offering to give him an advantageous situation, it was deemed incompatible with the object of the Institution to detain him longer. He was consequently indentured to a gentleman residing in the Western part of this State, who, in a letter directed to his mother, two months after the date of his indenture, says he has much reason to be pleased with David's conduct."

" J. D. S.—Aged eleven and a half years, born in New York. This child, notwithstanding his extreme youth, has committed many errors. He was first led

gradation which characterizes it when applied to adults; because it is permitted to teachers, with respect to their scholars; to masters, as respects apprentices; and because the rules laid down for regulating the punishment, are such as will effectually prevent its abuse. Yet, if experience should prove, as I think it will, that, even in these cases, it may be dispensed with, it ought to be abolished. But, while this power is granted by law to the master over the scholar, or apprentice, it would not be prudent to deny it to the warden, who acts in this capacity towards the children under his care.

There is also another difference that will be remarked, in comparing this institution with the Penitentiary: here public worship is directed, while, in the Penitentiary, no provision is made for its performance. The advantage to be derived from a habitual attendance on this duty, is so great, that it ought not lightly to be given up; but, after the best reflection I could give to the subject, I determined that it might safely be allowed in the school, but could not, without danger, be permitted in the Penitentiary. The discipline necessary to preserve order in the work-shops, and during the hours of instruction, will be sufficient for the same purpose, in the chapel, during divine service. In the habit of seeing and conversing with each other during the week, the association in the church, on Sunday, will not be made, by the children, the means of communicating plans for escape, or other unlawful combina-

to the perpetration of crime, by the persuasion of one older than himself, in whose company he stole many articles; he was once in Bridewell for stealing, and was frequently punished by his parents, but to no effect. He was committed here, at the solicitation of his father in April, 1825. He conducted himself with uniform propriety until October, 1826, when he was returned to his parents for the purpose of indenturing to a gentleman who was instrumental in his reformation, and who was well acquainted with his disposition. Here is another instance in which the preservation of a child from ruin may be attributed to the establishment of a House of Refuge. Had this boy's thieving practices been permitted to degenerate into a habit, they doubtless would have procured for him a residence in our State Prison or Penitentiary, where the object is punishment, and not reformation; he must have been thrown in the company of old and hardened offenders, the contaminating influence of whose conversation would eventually have banished every virtuous and generous sentiment from his tender bosom. What reflecting mind but must admit the utility of such an institution, and what generous soul but would contribute to its support?"

tion. But, in a Penitentiary, instituted for solitary confinement, the meeting of all the convicts on Sunday would be entirely inconsistent with the first principles of the plan: order could not be preserved without recourse being had to corporal chastisement; the convicts would anticipate the return of their periodical re-union, not to listen to the truths of religion, but to enjoy the society of which they had been deprived; the utmost vigilance could not prevent communication by whispers or signs; they would become acquainted with each other's faces, and be ready to renew, after discharge, those associations, which it is one object of the plan to prevent; and it has been asserted, and I believe with truth, that most of the combinations for insurrection and escape have been formed in the chapel.

In all these institutions, whether for restraint, punishment, or education, so much must depend on the integrity, attention, and ability, of the warden, that not only are the greatest care and judgment necessary in selecting him, but the most watchful superintendence after he is chosen. It may be stated as a general rule, to which, unhappily, there are few exceptions, that, if neglect in the performance of official duties incurs no loss of emolument, they will be neglected, unless the state of public opinion is such as to make it an equivalent sanction; this last is a powerful agent; but it cannot always be depended upon; and it operates least upon those that are most in want of a supervising power. A sensibility to public opinion, is connected, for the most part, with a moral sense that would, of itself, enforce a performance of the duty; and a lax morality is seldom attended with any great reverence for the opinions of others. But, in framing laws, we cannot count on the constant operation of this high sense of duty or regard to public approbation. They must be made for men as they are; and unfortunately the disposition to gain as much as possible, with as little trouble as possible, is that which we shall find most general, and which, therefore, we must counteract, or direct to our purpose, if we expect our institutions to be useful and permanent. A superintending power, therefore, has, in most systems of law, been provided to secure the execution of official duty: this is easily done, and, were the remedy an effectual

one, nothing could be more simple than this branch of legislation; but what can assure us that the supervisors will do their duty?

Custodes ipsos, quis custodiet?

In our legislation, we may create a system of successive responsibilities and inspections; but a foundation must be laid for the last. We may place the weight on the elephant, and support him by the tortoise; but here our theory, with that of the Indian cosmogonist, ends. Sound philosophy alone can, in both cases, direct us to the great principles, which effect the different ends, without this cumbrous and useless machinery. Individual interest draws all to a central point: a desire to promote the public good, enforced by the fear of censure and the hope of applause, gives an impetus in a different direction; and these powers combined, will restrain aberrations from the circle of official duty just as the order of the heavenly bodies is preserved by the divergent operation of mutual attraction and the projectile force.

Self-interest, then, must be so combined with the public good, as to make them inseparable; and public inspection must be secured, to keep this great spring of human action in its proper direction. This has been endeavoured in the plan of administration for the several houses of confinement provided for by this system.

The whole are placed under the superintending care of the same board, because, being parts of the same system, its general principles could only be enforced by a common head. The number of the institutions required an attention that a single person could not well perform; a board of inspection, therefore, was created; and, considering the nature of the duties, the number of five was fixed on as that which would best unite the advantages of deliberation with the requisite despatch of business; and a distribution of the duties into classes, that some might be performed by one member; making two necessary for others: and a majority for those which were most important, was considered as a convenient and safe arrangement.—This board, in addition to its general superintending power, has the direct management of all the pecuniary concerns of the

several prisons, but under regulations, which, it is thought, must prevent the possibility of any corrupt appropriation or negligent dilapidation of the funds. Among other precautions, is one that ought, I think, to be adopted in all cases of trust, whether arising from office, or contract, or testamentary disposition; the deposite of all moneys held for another, or for the public, or any institution, in a safe public bank, in the name of the trust, or of the person in his quality as officer or agent, to be drawn out only by checks, expressing the purpose to which the money is to be applied, and making it a criminal breach of trust if the deposite is not made, or if the funds are drawn for any other purpose than that of the person or institution for whose use it was received. The advantages of such an arrangement, in commercial agencies, and private and public trusts, need not be descanted on here: it is intended, in connexion with other provisions, prohibiting any kind of concern in purchases or sales made for the prisons, any profit or convenience from the employment of the prisoners, to take away all temptation of making the office a pecuniary speculation, and, what is of as much consequence, perhaps, to prevent its being thought one.

The board of inspection must be permanent; its duties are arduous; they require experience as well as diligence; the undivided attention of the members must be given to the subject; the close and unremitting labours required by the important business entrusted to them, cannot be expected to be gratuitously given. Few men, in our state of society, can afford to divert the time required for this purpose from their private affairs; and those who can afford it, are not always the best fitted for the task. They must, therefore, be paid, and so liberally paid, as to command the talent and integrity required. Philanthropy, public spirit, humanity, or religion, may inspire individuals to volunteer their services; but it is a natural tendency of zeal gradually to cool, when the service which excited it, is one requiring patient attention, a daily intercourse with the most degraded of our species, and a close attention to dull detail; more especially, when it requires no exertion of those talents that command public applause: besides this, if the service is unpaid, its negligent performance rarely incurs the pe-

nalty of public censure, which never falls very heavy on those who have gratuitously given any part of their time or attention to the business ; whereas, the salary being an equivalent for the service, legal punishment, as well as loss of reputation, will generally attend neglect. The particular powers given to the Board of Inspectors, need not be here detailed ; they are, it is thought, clearly designated in the text. As theirs is chiefly a supervising power, and not so direct an agency upon the prisoners as that of the other officers, it was not deemed necessary to give them any interest in the labour of the convicts, the number, too, of their members would have rendered this, extremely onerous to the institution. But with the Warden it was different ; to him it was deemed necessary to apply those principles I have endeavoured to establish, which make the interest of the officer and of the public to coincide. The interest of the public is, first, that all the regulations in the Code, for punishment and reformation, should be strictly observed ; secondly, that as much as possible of the expense of the institution should be paid by the labour of the convicts. To give the Warden an interest in the first branch, he has a premium on the decrease of re-convictions, the best mode of testing the efficiency of the system. To stimulate him in promoting the industry and skill of the convicts, he has a per centage on the gross amount of their labour ; while the superintendence of the Inspectors, their periodical examination of the prisoners, and of the other officers, the observation of the Chaplain and Physician, and of the official visitors, will effectually prevent his urging that labour by any other means, or in any greater degree, than is prescribed by the Code. It is also a great object, that, by preserving the health of the prisoners, the punishment should not be carried further than is directed by the sentence ; for this purpose, cleanliness, wholesome food, exercise, and proper relaxation from labour, are prescribed. To enforce their execution, the proper system of inspection is provided ; and to combine private interest and the love of distinction in the performance of this duty, honorary and useful premiums are given for different grades of decrease in the usual mortality of the prisons. These rewards are extended to all the officers whose agency can at all contribute to the end.

It may be necessary, before the conclusion of this report, to give some idea of the number of officers, and the duties of those which have not yet been mentioned.

The plan, as has been seen, comprehends,

A House of Detention, with two Departments;

A Penitentiary;

A School of Reform;

A House of Refuge and Industry, with two Departments.

All of these are under the general superintendence of five Inspectors. One Warden, and one Matron, will be required for each Institution. One Chaplain and one Physician will be sufficient for the four; a Clerk for the Penitentiary; one Teacher for the School for Reform, and another for the Penitentiary. In the other Institutions, the detention is not long enough to require a regular establishment for education: and one of the inmates will always be found competent for this purpose; so that, independent of the under keepers, the number of which will depend, in some measure, on that of the prisoners, the four Institutions will require thirteen officers. The manner in which the prisoners are proposed to be confined, will preclude the necessity of a military guard; and unless the number shall multiply much beyond our hopes and reasonable expectations, one underkeeper for the House of Detention, one for the School of Reform, two for the House of Industry, and six for the Penitentiary, ten only in all, will be required. In this calculation neither the Inspectors nor their Agents are included.

A regulation of much importance in the Code may need some explanation; which has not been given in its place. Solitary confinement, although accompanied by the permission to labour in an uncovered court, may, if the labour be sedentary, be injurious to the health. To counteract this effect, a machine is directed to be made that will require strong muscular power to put in motion; and at this, each of the male prisoners is directed to work, but only for one hour in each day. This is made compulsory; but as the only penalty is solitary confinement to the cell, and as it is considered and intended only as a preservation to the health, this compulsion is not at war with the principles before laid down on that subject. The prisoners

are to be brought to the machine separately, and it must be so contrived as not to permit them to see or hear each other while at work. Its effects will be not only to preserve general health, but to fortify the muscular powers, and fit the convict, on his discharge, for any species of laborious employment.

The tread-mill, although a favourite engine of punishment in many institutions, finds no place in this ; for the following reasons : It cannot be employed without breaking in upon the system of solitary confinement, which is the basis of the system: its injurious effects upon the health are supported by strong testimony;* and although there is a contrariety of evidence on the subject,† yet it may be fairly inferred, from the whole, that it does not fortify the constitution, and prepare the convict for any of the ordinary pursuits of laborious life, the principal muscular action being in the legs only. It teaches the convict nothing that can be useful to him on his discharge. It is not a profitable employment of human power. If it have any effect on the morals, it must be a bad one, from the associations inseparable from it, and from the degradation which is considered to be attached to it. As a punishment, it must be unequal ; to give it the velocity necessary to punish one of a robust constitution, would make it a torture to a weaker convict.

The Code of Reform and Prison Discipline, and the reasoning in support of its provisions, are now before the Legislature. Their wisdom will determine on the propriety of its adoption. Many parts of the plan have at different times been proposed, and some of them have been partially executed : but they have never before been consolidated and presented as component parts of a whole system ; a characteristic which, it is thought, constitutes its chief value : for it must be apparent, from the nature of the subject, that, without a continuity of operation, as well as uniformity of principle in the plan, no infliction of punishment or discipline for reformation can have any great effect. In all legislation, we must first form a clear idea of that which we wish to accomplish, and then determine on the best

* Sir John Cox Hippesly on the tread-mill.

† Sixth report of the society for the improvement of prison discipline, appendix.

means of effecting it. These being well understood, they must be explicitly enounced, not only for our own guidance in forming the plan, but for that of our successors in correcting, of the judges in expounding, and of our constituents in obeying it. In that which I offer, its great object has been constantly kept in view, and has been repeated perhaps oftener than was necessary : and the means proposed to effect it, are such only as have been recommended either by experience or the maturest reflection. But, as this object is the prevention of crime, it is clear that this would be but imperfectly effected by any discipline applied after conviction only. Conviction supposes the prior existence of crime, and the discipline that corrects it, is punishment ; but punishment is only one of the means of attaining the end of preventing crimes. To avoid their commission, therefore, we must go one step farther back. We must prevent contaminating association before trial, more carefully than we would after it. We must never confound innocence with unconvicted guilt, by imposing any unnecessary restraint upon either. But even accusation is most commonly founded on the evident commission of an offence, although trial is necessary to designate the offenders. We must begin, then, at an earlier stage in our efforts to prevent it. *We must relieve that extreme want which is sometimes the cause, and oftener the pretence for crime ;* and we must find employment for the idleness which generally produces it. And when this is done, our work is not yet complete ; religious, moral, and scientific instruction must be not only provided but enforced, in order to stamp on the minds of the people that character, that public feeling, and those manners, without which laws are but vain restraints.

The recapitulation of the several institutions embraced by the Code of Reform and Prison Discipline, has been made to show their close connexion, and that each part is so necessary to carry into effect the great objects of the system, that an omission of any one would, in a great measure, defeat the good effect that might be expected from the others. If we mean to guard the community from the inroads of crime, every avenue must be defended. A besieged city, fortified on one side, leaving the others open to hostile attacks, would be a

just image of a country in which laws are made to eradicate offences by punishments only, while they invite them by neglect of education, by the toleration of mendicity, idleness, vagrancy, and the corrupting associations of the accused before trial, as well as after conviction. Yet such is the lamentable state of criminal jurisprudence, that all nations are more or less in this condition. Here great severity is used to punish offences, but no means are provided to prevent them ; there mild punishments and a reformatory discipline are applied after judgment ; but severe imprisonment and contaminating associations are indiscriminately inflicted on the innocent and the guilty before trial. Between some States, the contest seems which shall raise the greatest revenue from the labour of the convicts : in others, the object is to degrade and make them feel their misery. No where has a system been established, consisting of a connected series of institutions founded on the same principle of uniformity directed to the same end. No where is criminal jurisprudence treated as a science. What goes by that name, consists of a collection of dissimilar, unconnected, sometimes conflicting expedients to punish different offences as they happen to prevail; of experiments, directed by no principle, to try the effect of different penalties; of permanent laws to repress temporary evils; of discretionary power, sometimes with the blindest confidence vested in the judge, and at others with the most criminal negligence given to an officer of executive justice. All these and other incongruities would cease, were the lawgiver to form correct principles ; enounce them for his own guidance and that of his successors ; and, with them constantly before his eyes, arrange his system of criminal jurisprudence into its natural divisions, by providing for the poor, employing the idle, educating the ignorant, defining offences, and designating their correspondent punishment, regulating the mode of procedure for preventing crimes and prosecuting offenders, and giving precise rules for the government and discipline of prisons.

With such a system it may reasonably be expected, not that offences will be eradicated, but that their recurrence will be much less frequent, and that the rare spectacle will be witnessed of a retrograde movement in vice and crime. But the desultory attempts which have been made, and are daily ma-

king, to carry some of its detached parts into execution, do but retard the progress and endanger the success of reform ; they are troublesome, they are expensive. The false reliance that is placed upon them by their advocates, excites high expectations, which must be disappointed ; because a disease pervading the system cannot be cured by topical remedies ; and the disappointment produces despair of final success, an abandonment of the plan of reformation, and an inclination to return to the old sanguinary system.*

The Code now submitted completes the system of penal law, which is respectfully offered for consideration.

The task was undertaken with an unfeigned distrust of my own powers, which nothing could have conquered but the conviction that a simple enumeration, and development of the principles on which the system is founded, would force a conviction of their truth.

It has been prosecuted with laborious and unremitting application for several years, with a respectful attention to the opinions of others, and a close observation of practical results.

Its conclusion was attended with the gratifying consciousness of having taken every precaution to guard against the pride of opinion, and neglected no means that could be suggested by the deepest sense of its importance, and a religious desire that it might advance private happiness, by establishing the true principles of public justice.

And it is now respectfully offered for consideration, in the hope that after legislative wisdom shall have supplied the omissions, and corrected the errors of the work, it may be made the basis of a system by which instruction may be promoted, idleness and vice repressed, crimes diminished, and the sum of human happiness increased.

EDWARD LIVINGSTON.

* There is one other point, which, although insisted on in the introductory report to the Penal Code, I cannot avoid recurring to here, because its importance will justify repetition, and because of its bearing on one of the institutions recommended in this report. I mean such a change in the constitution of the courts as to leave one of criminal jurisdiction in permanent session. This arrangement will curtail expenses, both in the construction and administration of the House of Detention; will prevent delays, injurious to the course of justice and vexations to the accused: and will be found neither difficult nor costly in its execution.



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